

Complaint

IN THE MATTER OF

**PFIZER INC. AND WARNER-LAMBERT
COMPANY**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

*Docket C-3957; File No. 0010059
Complaint, June 19, 2000--Decision, July 27, 2000*

This consent order addresses the \$90 billion acquisition by Pfizer Inc. of Warner-Lambert Company. The complaint alleges that the proposed merger, if consummated, would constitute a violation of Section 7 of the Clayton Act and Section 5 of the FTC Act in the markets for: (1) SSRI/SNRI antidepressants; (2) pediculicides; (3) drugs for the treatment of Alzheimer=s disease; and (4) EGFr-tk inhibitors for the treatment of cancer. The consent order requires the companies to terminate Warner=s agreement with Forest Laboratories, Inc. to co-promote the antidepressant Celexa; divest Pfizer=s RID pediculicide (used to treat head lice) business to Bayer Corporation; divest all of Warner=s assets relating to the Alzheimer=s drug, Cognex, to First Horizon Pharmaceutical Corporation; and transfer and surrender, to OSI Pharmaceuticals, Inc., all of Pfizer=s assets relating to the Epidermal Growth Factor receptor tyrosine kinase inhibitor, CP-358,774, for the treatment of cancer.

Participants

For the Commission: *Elizabeth A. Jex, Randall A. Long, Laura I. Bren, Ann Malester, David Von Nirschl, Elizabeth A. Piotrowski, Debra J. Holt, Daniel O=Brien, and Gregory S. Vistnes.*

For the Respondents: *Mark D. Godler, David Klingsberg, and Michael Malina, Kaye Scholer, Fierman, Hays & Handler, Alec Y. Chang and Clifford N. Aronson, Skadden, Arps, Slate, Meagher & Flom LLP. Christopher R. Manning, Burke, Warren, Mackay & Serritella, Robert E. Bell, Wilmer, Cutler & Pickering, Howard Adler, Baker & McKenzie, and Herschel S. Weinstein, Dornbush, Mensch, Mandelstham & Schaeffer, LLP.*

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The Federal Trade Commission (ACommission@), having reason to believe that Respondent Pfizer Inc. (APfizer@), a corporation subject to the jurisdiction of the Commission, has agreed to merge with Respondent Warner-Lambert Company (AWarner@), a corporation subject to the jurisdiction of the Commission, in violation 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 it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. DEFINITIONS

1. "Forest" means Forest Laboratories, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 909 Third Avenue, New York, New York 10022.
2. AMerger Agreement@ means the Agreement and Plan of Merger among Pfizer, through its wholly-owned subsidiary, Seminole Acquisition Sub Corp., and Warner, dated February 6, 2000.
3. "Commission" means the Federal Trade Commission.
4. AFDA@ means the United States Food and Drug Administration.
5. AOTC pediculicides@ means all over-the-counter products manufactured, developed, or sold for the treatment of lice infestation.

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6. ASSRI@ means selective serotonin reuptake inhibitor.
7. ASNRI@ means serotonin norepinephrine reuptake inhibitor.
8. ASSRI/SNRI drugs for the treatment of depression@ means the SSRI/SNRI pharmaceutical preparations approved by the FDA for the treatment of depression.
9. ADrugs for the treatment of Alzheimer=s disease@ means any acetylcholinesterase inhibitor pharmaceutical preparation approved by the FDA for the treatment of Alzheimer=s disease.
10. AEGFr-tk inhibitors for the treatment of cancer@ means any small molecule pharmaceutical preparation which inhibits the tyrosine kinase activity of the epidermal growth factor receptor in development or approved by the FDA for the treatment of cancer.
11. ACelexa@ means any pharmaceutical preparation containing the drug substance citalopram HBr.
12. AZoloft@ means any pharmaceutical preparation containing the drug substance sertraline hydrochloride.
13. ACognex@ means any pharmaceutical preparation containing the drug substance tacrine hydrochloride.
14. AAricept@ means any pharmaceutical preparation containing the drug substance donepezil hydrochloride.

II. RESPONDENTS

15. Respondent Pfizer is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 235 East 42nd Street, New York, New York 10017. Pfizer, among other things, is engaged in the research, development,

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manufacturing and sale of human pharmaceutical products, including OTC pediculicides, SSRI/SNRI drugs for the treatment of depression, drugs for the treatment of Alzheimer=s disease, and EGFr-tk inhibitors for the treatment of cancer.

16. Respondent Warner is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 201 Tabor Road, Morris Plains, New Jersey 07950. Warner, among other things, is engaged in the research, development, manufacturing and sale of human pharmaceutical products, including OTC pediculicides, SSRI/SNRI drugs for the treatment of depression, drugs for the treatment of Alzheimer=s disease, and EGFr-tk inhibitors for the treatment of cancer.

17. Respondents are, and at all times relevant herein have been, engaged in commerce, as Acommerce@ is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. ' 12, and are corporations whose business is in, or affects commerce, as Acommerce@ is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 44.

III. THE PROPOSED MERGER

18. On February 6, 2000, Pfizer and Warner entered into a Merger Agreement whereby Pfizer agreed to acquire, through its wholly-owned subsidiary, Seminole Acquisition Sub Corp., 100 percent of all issued shares of Warner for approximately \$90 billion (AMerger@). Upon completion of the transaction the merged entity will be known as Pfizer.

IV. THE RELEVANT MARKETS

19. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Merger are:

- a. the research, development, manufacture and sale of OTC pediculicides;

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- b. the research, development, manufacture and sale of SSRI/SNRI drugs for the treatment of depression;
- c. the research, development, manufacture and sale of drugs for the treatment of Alzheimer=s disease; and
- d. the research, development, manufacture and sale of EGFr-tk inhibitors for the treatment of cancer.

20. For the purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Merger in the relevant lines of commerce.

V. THE STRUCTURE OF THE MARKETS

21. The market for OTC pediculicides is highly concentrated as measured by the Herfindahl-Hirschman Index (HHI@). Pfizer and Warner are the two leading suppliers of OTC pediculicides in the United States. Pfizer and Warner each have approximately 30 percent of the market, and the pre-merger HHI is 2223. As a result of the Merger, Pfizer would have a 60 percent share of the market, and the post-merger HHI would be 4024.

22. The market for SSRI/SNRI drugs for the treatment of depression is concentrated as measured by the HHI. Pfizer=s Zoloft has 23 percent of the market, while Celexa, which Warner co-promotes with Forest, has a 10 percent market share, and the pre-merger HHI is 1834. As a result of the Merger, Pfizer/Forest would have a 33 percent share of the market, and the post-merger HHI would be 2294.

23. The market for drugs for the treatment of Alzheimer=s disease is highly concentrated as measured by the HHI. Pfizer=s Aricept has over 98 percent of the market, while Warner=s Cognex has about one percent market share, and the pre-merger

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HHI is 9801. As a result of the Merger, Pfizer would obtain a monopoly position and post-merger HHI would be 10,000.

24. In the market for EGFr-tk inhibitors for the treatment of cancer, the FDA has yet to approve any product. If approved by the FDA, these products would offer a significant improvement in the treatment of solid tumor cancers. The market for the research, development, manufacture and sale of EGFr-tk inhibitors for the treatment of cancer is highly concentrated; currently only four companies, including Pfizer and Warner, have EGFr-tk inhibitors in human clinical testing. The proposed Merger would reduce the number of companies to three.

VI. ENTRY CONDITIONS

25. Entry into the market for OTC pediculicides is unlikely and would not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 29, because, among other things, the time and expense necessary to develop a product capable of successful entry are disproportionate to the likely available sales opportunity.

26. Entry into the market for SSRI/SNRI drugs for the treatment of depression will not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 29, because of, among other things, the time and expense necessary to develop an FDA-approved antidepressant.

27. Entry into the market for drugs for the treatment of Alzheimer=s disease will not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 29, because of, among other things, the time and expense necessary to develop an FDA-approved Alzheimer=s disease treatment.

28. Entry into the market for the research, development, manufacture and sale of EGFr-tk inhibitors for the treatment of cancer will not occur in a timely manner to deter or counteract the

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adverse competitive effects described in Paragraph 29, because of, among other things, the time and expense necessary to develop an FDA-approved cancer treatment.

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VII. EFFECTS OF THE MERGER

29. The effects of the Merger, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. ' 45, in the following ways, among others:

- a. by increasing the ability of the merged entity to unilaterally increase prices, and reduce innovation and promotional activities, in the market for OTC pediculicides;
- b. by increasing the likelihood of coordinated interaction in the market for SSRI/SNRI drugs for the treatment of depression;
- c. by increasing the likelihood that the merged entity would unilaterally increase prices and reduce innovation in the market for drugs for the treatment of Alzheimer=s disease; and
- d. by increasing the likelihood that the merged entity would unilaterally delay, deter or eliminate competing programs to research and develop EGFr-tk inhibitors for the treatment of cancer, potentially reducing the number of drugs reaching the market and thus resulting in higher prices for consumers.

VIII. VIOLATIONS CHARGED

30. The Merger Agreement described in Paragraph 18 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. ' 45.

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31. The Merger described in Paragraph 18, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. ' 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this nineteenth day of June, 2000, issues its Complaint against said Respondents.

By the Commission.

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (ACommission@) having initiated an investigation of the proposed merger between Pfizer Inc. (APfizer@) and Warner-Lambert Company (AWarner@), hereinafter referred to as ARespondents,@ and the Respondents having been furnished thereafter with a copy of a draft of Complaint which the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge the 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 (AConsent Agreement@), containing the proposed Decision and Order, an admission by the Respondents of all of the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by

Order to Maintain Assets

the Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than the 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 that it has reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place the Consent Agreement on the public record for a period of thirty (30) days, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Pfizer is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 235 East 42nd Street, New York, New York 10017.
2. Respondent Warner is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 201 Tabor Road, Morris Plains, New Jersey 07950.
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.

ORDER**I.**

IT IS ORDERED that, as used in this Order to Maintain Assets, the definitions used in the Consent Agreement and the attached Decision and Order shall apply.

II.

Order to Maintain Assets

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final:

- A. Respondents shall take such actions as are reasonably necessary to maintain the viability, marketability, and competitiveness of the Celexa Assets, the Cognex Divestiture Assets, the RID Divestiture Assets, and the EGFr-tk Assets, hereinafter collectively referred to as AAssets,@ and to prevent the destruction, removal, wasting, or deterioration, of the Assets, except for ordinary wear and tear and as would otherwise occur in the ordinary course of business.
- B. Pending the divestiture or transfer of each of the respective Assets, Respondents shall adhere to and abide by the Celexa Termination Agreement, the Cognex Divestiture Agreement, the RID Divestiture Agreement, and the EGFr-tk Divestiture Agreement, which agreements are incorporated by reference into this Order to Maintain Assets and made a part hereof, and are also appended to the attached Decision and Order.

III.

IT IS FURTHER ORDERED that at any time after the Commission issues this Order to Maintain Assets, the Commission may appoint an Interim Trustee as provided in the attached Decision and Order.

IV.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in Respondents that may affect compliance obligations arising out of this Order to Maintain Assets, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation.

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V.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of Respondents 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 the Respondents relating to compliance with this Order to Maintain Assets; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

VI.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (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 all of the divestitures or transfers of the Assets, as described in and required by the Decision and Order, are completed.

By the Commission.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (ACommission@) having initiated an investigation of the proposed merger of Respondent Warner-Lambert Company (AWarner@) and Respondent Pfizer Inc. (APfizer@), hereinafter referred to as ARespondents,@ and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition presented 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 (AConsent Agreement@), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of 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 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, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed 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 makes the following jurisdictional findings and issues the following Order:

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1. Respondent Pfizer is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 235 East 42nd Street, New York, New York 10017.

2. Respondent Warner is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 201 Tabor Road, Morris Plains, New Jersey 07950.

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.

ORDER

I.

IT IS ORDERED that, as used in this order, the following definitions shall apply:

A. "Pfizer" means Pfizer Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Pfizer Inc. and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Warner" means Warner-Lambert Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Warner-Lambert Company (including, but not limited to, the Parke-Davis Division), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondents" means Pfizer and Warner, individually and collectively.

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D. AMerger@ means the proposed merger of Pfizer and Warner by means of an Agreement and Plan of Merger dated as of February 6, 2000 among Pfizer, Seminole Acquisition Sub. Corp., and Warner.

E. "Commission" means the Federal Trade Commission.

F. "Forest" means Forest Laboratories, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 909 Third Avenue, New York, New York 10022.

G. AFirst Horizon@ means First Horizon Pharmaceutical Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 660 Hembree Parkway, Suite 106, Roswell, Georgia 30076.

H. ABayer@ means Bayer Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its offices and principal place of business located at 36 Columbia Road, Morristown, New Jersey 07962-1910.

I. AOSI@ means OSI Pharmaceuticals, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 106 Charles Lindbergh Boulevard, Uniondale, New York, 11553-3649.

J. ACelexa@ means any pharmaceutical preparation containing the drug substance citalopram HBr that is the subject of the Celexa Co-Promotion Agreement and the Celexa Amendment. Celexa includes any and all of its constituent

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elements, active ingredients or intermediaries, and all rights relating to the research, development, manufacture and sale of Celexa.

K. ACElexa Co-Promotion Agreement@ means the Agreement dated March 27, 1998 by and between Forest and the Parke-Davis Division of Warner attached hereto as non-public Appendix I.

L. ACElexa Amendment@ means the Amendment to the Celexa Co-Promotion Agreement between Forest and the Parke-Davis Division of Warner, dated September 1, 1999, attached hereto as non-public Appendix II.

M. ACElexa Assets@ mean all rights granted to Warner pursuant to the Celexa Co-Promotion Agreement and Celexa Amendment.

N. ACElexa Termination Agreement@ means the Amendment No. 2 and Termination Agreement terminating the Celexa Co-Promotion Agreement and Celexa Amendment by and between Forest and Warner, dated May 11, 2000, attached hereto as non-public Appendix III.

O. AKnow-how@ means all technological, technical, scientific, chemical, biological, pharmacological, toxicological, regulatory and marketing materials and information used to develop, make, use, sell, offer for sale, import or seek regulatory approval in any country to market a Product, including without limitation all: formulae; trade secrets; inventions; techniques; intellectual property (including patents and patent applications) whether or not patentable; discoveries; compounds; compositions of matter, assays, reagents, and biological materials; trademarks; research data; technical data and information; testing data; preclinical and clinical data; toxicological and pharmacological data; regulatory files; statistical analyses; analytical data; clinical protocols; specifications; designs; drawings; processes; testing and quality assurance/quality control data; manufacturing data and information; regulatory submissions; and any other information and experience, whether recorded on paper or electronically.

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P. ACelexa Know-how@ means all Confidential Business Information and Know-how in the possession or control of Warner as of the date Warner signed the Celexa Termination Agreement that relates in whole or in part to Celexa, including without limitation information and documents stored on all computer files and management information systems; written, recorded and graphic materials of every kind; proprietary software used in connection with Celexa; all data, contractual rights, materials, documents and information relating to obtaining FDA approvals and other government or regulatory approvals for Celexa; and any other information, documents and experience relating to Celexa. Celexa Know-how shall be deemed to include all information comprised by Celexa Assets. Celexa Know-how includes, but is not limited to:

1. notes, minutes and other documents relating to speaker programs, Alunch and learn@ programs, and meetings with medical advisers to Forest or Warner in connection with the Celexa Co-Promotion Agreement (and Celexa Amendment), including plans for future programs and meetings, market research data and proposals relating to Celexa;
2. all marketing plans including written fiscal year and contract year marketing plans, media placement plans, public relations plans, convention plans, symposia plans, publication plans, pricing plans, and line extension plans related to Celexa;
3. minutes of all Celexa meetings, and intracompany and intercompany correspondence related to such meetings;
4. all advisory board and consultants= correspondence related to Celexa;
5. all correspondence with advertising, public relations and medical education agencies related to Celexa;

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6. speaker training materials and all other medical education materials related to Celexa;

7. all market research, including both primary and secondary, whether conducted by Forest or Warner= Parke-Davis Division related to Celexa;

8. all forecasts and assumptions, including sample production forecasts related to Celexa;

9. all presentation materials used at national sales meetings or manager meetings related to Celexa;

10. all physician targeting data and call plans including reach and frequency plans related to Celexa;

11. all communications with the FDA and DDMAC related to Celexa;

12. all Phase IV clinical study plans and protocols provided to Warner related to Celexa;

13. all regulatory and development information including information on Celexa line extensions, tablet strengths and SKUs related to Celexa;

14. any and all information provided from the Celexa NDA, investigators= brochures or study reports;

15. all professional affairs letters related to Celexa utilized to respond to physician inquiries; and

16. all information related to Celexa pertaining to managed care, government accounts, hospitals, long-term care

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and other channels. This includes all contracts and contracting templates and strategies.

Provided, however, that Celexa Know-how does not include information which becomes or became available to Respondents on a non-confidential basis from a source other than Forest, if such source is not under obligation (whether contractual, legal or fiduciary) to Forest to keep such information confidential.

Q. AConfidential Business Information@ means all information that is not in the public domain concerning the research, development, marketing, distribution, cost, pricing, sale and commercialization of a Product or of a Product in development.

R. "Celexa Material Confidential Information@ means any information not in the public domain obtained by Respondents directly or indirectly from Forest pursuant to the Celexa Co-Promotion Agreement and Celexa Amendment prior to the date this Order becomes final, and includes, but is not limited to, Celexa Know-how and Confidential Business Information relating to Celexa.

S. AFDA@ means the United States Food and Drug Administration.

T. ADDMAC@ means the Division of Drug Marketing, Advertising and Communication of the FDA.

U. ANDA@ means a New Drug Application filed or to be filed with the FDA, any preparatory work, drafts and data necessary for the preparation thereof, and Know-how, and includes without limitation both supplemental and abbreviated NDAs.

V. AZoloft@ means any pharmaceutical preparation containing the drug substance sertraline hydrochloride, any of its constituent elements, active ingredients or intermediaries, and all

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rights relating to the research, development, manufacture and sale of Zoloft, which is manufactured, marketed and distributed by Pfizer.

W. ASSRI/SNRI@ means any selective serotonin reuptake inhibitor/serotonin norepinephrine reuptake inhibitor, including, but not limited to, branded, generic or isomer forms of the following drugs: Paxil, Prozac, Zoloft, Luvox, Effexor, and Celexa.

X. ACognex@ means any pharmaceutical preparation containing the drug substance tacrine hydrochloride. Cognex includes any of its constituent elements, active ingredients, intermediaries, and all rights relating to the research, development, manufacture and sale of Cognex and the once daily controlled release formulation containing Tacrine as the HCl salt and using the gastrointestinal therapeutic system technology from ALZA Corporation.

Y. ATacrine@ means the active pharmaceutical ingredient produced at Warner's chemical manufacturing facility in Holland, Michigan.

Z. ACognex Divestiture Assets@ mean all assets relating to Cognex and Tacrine as defined in the Cognex Divestiture Agreement.

AA. ACognex Divestiture Agreement@ means the asset purchase agreement between Warner and First Horizon relating to the sale of the Cognex Divestiture Assets, dated April 14, 2000, attached hereto as non-public Appendix IV.

BB. AEGFr-tk@ means any pharmaceutical preparation containing the drug substance Epidermal Growth Factor receptor tyrosine kinase inhibitor, CP 358,774. EGFr-tk shall also include all salts and prodrug forms of CP 358,774.

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CC. AEGFr-tk Assets@ means all assets relating to EGFr-tk to be licensed or transferred to OSI pursuant to the EGFr-tk Divestiture Agreement. *Provided, however,* that if OSI requests such assets, the EGFr-tk Assets shall also include intellectual property and technology (including Joint Technology) arising under the OSI/Pfizer Collaboration Research Agreements and OSI/Pfizer License Agreements which relate to CP 358,774 and to salts and prodrug forms of CP 358,774, and which are reasonably necessary to research, develop, manufacture, or sell EGFr-tk.

DD. AOSI/Pfizer Collaboration Research Agreements@ means the Agreement dated April 1, 1986, the Agreement dated April 1, 1991 and the Agreement dated April 1, 1996, by and between OSI and Pfizer, attached hereto as non-public Appendix V.

EE. AOSI/Pfizer License Agreements@ means the Agreements dated December 14, 1990 and April 1, 1996, by and between OSI and Pfizer, attached hereto as non-public Appendix VI.

FF. AEGFr-tk Divestiture Agreement@ means the Agreement between Pfizer and OSI dated May 23, 2000, attached hereto as non-public Appendix VII.

GG. AJoint Technology@ means all technology and technical information relating to EGFr-tk pursuant to the OSI/Pfizer Collaboration Research Agreements.

HH. AOwnership Interest@ means any right(s), present or contingent, to hold voting or nonvoting interest(s), equity interest(s), and/or beneficial ownership(s) in the capital stock of OSI.

II. ARID@ means Pfizer=s rights and assets relating to any Product containing the active ingredient pyrethrum that is a lice treatment or related Product, including all rights relating to the research, development, manufacture and sale of lice treatments or related Products, including but not limited to individual, kit,

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advance systems and bulk SKUs containing RID spray, shampoo, egg loosener gel, mousse or comb.

JJ. ARID Assets@ means all assets relating to RID as defined in the RID Divestiture Agreement.

KK. ARID Divestiture Assets@ means:

1. all intellectual property, including pending patent applications, licenses, inventions, technology, Know-how, patents, trademarks, brand names, trade names, trade dress, trade secrets, and copyrights;
2. all research materials, formulations, new product formulations, line extensions, patent rights, trade secrets, specifications, protocols, technical information, regulatory information and approvals, manufacturing information, management information systems, software, specifications, designs, drawings, processes and quality control data;
3. all customer lists, vendor lists, medical marketing lists, catalogs, sales promotion literature, promotional materials, displays, tokens, advertising materials, marketing plans and strategies, price and discount strategies, price lists, sales forecasts, distribution information, trade booths, medical marketing convention floor space and related items, telephone and facsimile numbers, as well as other customer support materials (including, without limitation, web sites);
4. inventory and storage capacity;
5. all third party agreements and contracts that are related to the research, development, manufacture, marketing, sale or use of RID, including but not limited to contract manufacturing arrangements;

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6. inventories, including finished goods inventory of RID, works in progress, raw material and packaging materials for RID, including but not limited to the active ingredient pyrethrum;

7. all rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

8. all rights under warranties and guarantees, express or implied;

9. all books, records and files; and

10. all items of prepaid expense.

Provided, however, that the RID Divestiture Assets shall also include all research, development and manufacturing assets necessary to produce RID in a government-approved facility if the person acquiring the RID Divestiture Assets requests such assets.

LL. ARID Divestiture Agreement@ means the asset purchase agreement between Bayer and Pfizer dated April 11, 2000, attached hereto as non-public Appendix VIII.

MM. AProduct@ means any finished pharmaceutical composition containing any formulation or dosage of a compound as its pharmaceutically active ingredient.

NN. ARID Closing@ means the date that Bayer acquires the RID Assets from Pfizer.

OO. APublic Record Date@ means the date that the Commission places the Consent Agreement on the public record pursuant to Commission Rule 2.34, 16 C.F.R. ' 2.34.

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PP. AEPA@ means the United States Environmental Protection Agency.

QQ. ASKU@ means stock keeping unit.

RR. AKey Employees@ means the individuals identified in public Appendix IX attached hereto.

II.**IT IS FURTHER ORDERED** that:

A. Not later than (10) days after the Public Record Date, Respondents shall terminate, absolutely and in good faith, the Celexa Co-Promotion Agreement and Celexa Amendment, pursuant to and in accordance with the terms of the Celexa Termination Agreement. The Celexa Termination Agreement is incorporated by reference into this Order and made a part hereof as non-public Appendix III. Failure to comply with all of the terms of the Celexa Termination Agreement shall constitute a failure to comply with this Order.

B. Respondents shall return and submit to Forest at its New York corporate office, at Respondents' expense, all Celexa Know-how pursuant to the terms of the Celexa Termination Agreement. Respondents shall not retain any copies of Celexa Know-how except as required by law.

C. Respondents shall provide Forest with the opportunity to enter into employment contracts with the Key Employees listed in Appendix IX attached to this Order through March 31, 2001. Respondents shall provide Forest an opportunity to inspect the personnel files and other documentation relating to these employees, to the extent permissible under applicable laws, at the request of Forest any time after execution of the Celexa Termination Agreement. Respondents shall not interfere with the

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employment by Forest of these employees and shall remove any impediments that may deter such employees from accepting employment with Forest, including, but not limited to, any non-compete provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by Forest.

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D. Respondents shall not use, disclose or convey, directly or indirectly, any Celexa Know-how or any Confidential Business Information relating to the research, development, manufacturing or marketing of Celexa to any other person.

E. Respondents shall require each Key Employee to sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Celexa Know-how (including, without limitation, all field experience) strictly confidential, including from all other employees, executives or other personnel of Respondents. (A copy of this confidentiality agreement is appended hereto as public Appendix X). Respondents shall ensure that Key Employees (listed in Appendix IX) shall not be involved in the marketing, sale or promotion of Zoloft or any SSRI/SNRI Product other than Celexa through March 31, 2001.

F. Respondents shall also provide written notification of the restrictions on the use of Celexa Know-how by former Warner personnel and of the restrictions on the Warner personnel from selling Zoloft, or accompanying Pfizer personnel involved with the sale or marketing of Zoloft, for the time periods set forth in the Celexa Termination Agreement, to all Warner employees involved in the sale or marketing of Celexa (other than the Key Employees) and all Pfizer employees involved with the sale or marketing of Zoloft. Respondents shall provide such notification by email with return receipt requested or similar transmission. (A copy of this confidentiality notification is appended hereto as Appendix XI). Respondents shall also obtain from each employee covered by the requirements of this subparagraph an agreement to abide by these restrictions. Respondents shall maintain complete records of all such statements at Respondents' corporate headquarters and shall provide an officer's certificate to the Commission, stating that such acknowledgment program has been implemented and is being complied with. Respondents shall monitor the implementation by their sales forces of these restrictions, including the provision of written reminders to all

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sales personnel at three (3) month intervals until the expiration of the time periods set forth in the Celexa Termination Agreement, and take corrective actions for the failure of sales personnel to comply with such restrictions or to furnish the written acknowledgments required by this Order.

G. Pending the termination of the Celexa Co-Promotion Agreement and the Celexa Amendment, Respondents shall take such actions as are necessary to maintain the viability and marketability of Celexa and to prevent the destruction, removal, wasting, deterioration, or impairment of any Celexa Assets, except for ordinary wear and tear.

H. Except as required by law, Respondents shall not receive or have access to, or use or continue to use, any Celexa Material Confidential Information.

I. The purpose of Paragraph II of this Order is to ensure the continued use of the Celexa Assets in the same business in which the Celexa Assets are engaged at the time of the Merger, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's complaint.

III.**IT IS FURTHER ORDERED** that:

A. Not later than ten (10) days after the Public Record Date, Warner shall divest the Cognex Divestiture Assets to First Horizon pursuant to and in accordance with the Cognex Divestiture Agreement, and such agreement is incorporated by reference into this Order and made part hereof as non-public Appendix IV.

B. Failure to comply with all terms of the Cognex Divestiture Agreement shall constitute a failure to comply with this Order.

C. Pending divestiture of the Cognex Divestiture Assets, Respondents shall take such actions as are necessary to maintain

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the viability and marketability of the Cognex Divestiture Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Cognex Divestiture Assets except for ordinary wear and tear.

D. The purpose of Paragraph III of this Order is to ensure the continued use of the Cognex Divestiture Assets in the same business in which the Cognex Divestiture Assets are engaged at the time of the Merger, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's complaint.

IV.**IT IS FURTHER ORDERED** that:

A. Not later than ten (10) days after the Public Record Date, Pfizer shall divest the RID Assets to Bayer pursuant to and in accordance with the RID Divestiture Agreement, and such agreement is incorporated by reference into this Order and made part hereof as non-public Appendix VIII. *Provided, however*, that if Respondents have divested the RID Assets to Bayer prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Bayer is not an acceptable purchaser of the RID Assets or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with Bayer and shall divest the RID Divestiture Assets within six (6) months from the date the Order becomes final, absolutely and in good faith, at no minimum price, to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

B. Failure to comply with all terms of the RID Divestiture Agreement shall constitute a failure to comply with this Order.

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C. Pending divestiture of the RID Divestiture Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of the RID Divestiture Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the RID Divestiture Assets except for ordinary wear and tear.

D. The purpose of Paragraph IV of this Order is to ensure the continued use of the RID Assets or RID Divestiture Assets in the same business in which the RID Assets or RID Divestiture Assets are engaged at the time of the Merger, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's complaint.

V.**IT IS FURTHER ORDERED** that:

A. Not later than ten (10) days after the Public Record Date, Respondents shall transfer and surrender, absolutely and in good faith, all of Pfizer's EGFr-tk Assets, pursuant to and in accordance with the EGFr-tk Divestiture Agreement to OSI, and such agreement is incorporated by reference into this Order and made a part hereof as non-public Appendix VII. Failure by Respondents to comply with the requirements of the EGFr-tk Divestiture Agreement shall constitute a failure to comply with this Order.

B. Upon reasonable notice and request from OSI to Respondents, Respondents shall provide to OSI, in a timely manner and at no cost to OSI, any assistance, advice or EGFr-tk Assets as may be reasonably necessary for OSI to obtain FDA approvals to manufacture and sell EGFr-tk.

C. Respondents shall not, directly or indirectly: (i) exercise dominion or control over, or otherwise seek to influence, the management, direction or supervision of the business of OSI; (ii) seek or obtain representation on the Board of Directors of OSI; (iii) exercise any voting rights attached to any ownership of OSI

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shares of stock; (iv) seek or obtain access to any Confidential Business Information of OSI relating to EGFr-tk and not otherwise necessary to comply with this Order; or (v) take any action or omit to take any action in a manner that would be incompatible with the status of Respondents as passive investors in OSI. The requirements of Paragraph V.C. shall continue and remain in effect so long as the Respondents retain any Ownership Interest in OSI.

D. Pending the completion of the transfer of the EGFr-tk Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of the EGFr-tk Assets, and to prevent the destruction, deterioration, or impairment of any of the EGFr-tk Assets. Respondents shall also take such actions as are necessary to maintain the viability and marketability of the EGFr-tk Assets, and to prevent the destruction, deterioration, or impairment of any of the EGFr-tk Assets.

E. The purpose of Paragraph V of this Order is to ensure the continued use of the EGFr-tk Assets in the same business in which the EGFr-tk Assets are engaged at the time of the Merger, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's complaint.

VI.**IT IS FURTHER ORDERED** that:

A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint an Interim Trustee to assure that Respondents expeditiously perform their responsibilities as required by this Order and the EGFr-tk Divestiture Agreement.

B. If an Interim Trustee is appointed pursuant to Paragraph VI of this Order, Respondents shall consent to the following terms

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and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Trustee:

1. The Commission shall select the Interim Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. The Interim Trustee shall have the power and authority to monitor Respondents= compliance with the terms of this Order and with the terms of the EGFrtk Divestiture Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Trustee in a manner consistent with the purposes of this Order and in consultation with the Commission.

3. Within ten (10) days after appointment of the Interim Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the Interim Trustee all the rights and powers necessary to permit the Interim Trustee to monitor Respondents= compliance with the terms of this Order and with the terms of the EGFrtk Divestiture Agreement in a manner consistent with the purposes of this Order.

4. The Interim Trustee shall serve until the last obligation under the EGFrtk Divestiture Agreement has been fully performed; *provided, however*, the Commission may extend this period as may be necessary or appropriate to accomplish the purposes of this Order.

5. The Interim Trustee shall have full and complete access to Respondents= personnel, books, records, documents, facilities and technical information relating to the research,

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development and manufacture of EGFr-tk, or to any other relevant information, as the Interim Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the manufacture of EGFr-tk and all materials and information relating to FDA and other government or regulatory approvals. Respondents shall cooperate with any reasonable request of the Interim Trustee. Respondents shall take no action to interfere with or impede the Interim Trustee's ability to monitor Respondents' compliance with this Order and the EGFr-tk Divestiture Agreement.

6. The Interim Trustee 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 Commission may, among other things, require the Interim Trustee to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with performance of the Interim Trustee's duties. The Interim Trustee 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 Interim Trustee's duties and responsibilities. The Interim Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.

7. Respondents shall indemnify the Interim Trustee and hold the Interim Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Interim Trustee's duties, including all reasonable fees of counsel and other 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 misfeasance, gross

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negligence, willful or wanton acts, or bad faith by the Interim Trustee.

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8. If the Commission determines that the Interim Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Trustee in the same manner as provided in Paragraph VI.A. of this Order.

9. The Commission may on its own initiative or at the request of the Interim Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order and the EGFr-tk Divestiture Agreement.

10. The Interim Trustee shall obtain and evaluate reports submitted to it by OSI with respect to the performance of Respondents' obligations under the EGFr-tk Divestiture Agreement. The Interim Trustee shall report in writing to the Commission every two (2) months from the date the Interim Trustee is appointed concerning compliance by Respondents and OSI with the provisions of this Order and the EGFr-tk Divestiture Agreement until the last obligation under the EGFr-tk Divestiture Agreement has been fully performed.

VII.**IT IS FURTHER ORDERED** that:

A. If Respondents have not fully complied with the obligations specified in Paragraph IV of this Order, the Commission may appoint an individual to serve as a trustee to divest the RID Divestiture Assets. 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 trustee in such action to divest the RID Divestiture Assets. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking

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civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to ' 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph VII.A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee=s powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The 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 trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the RID Divestiture Assets.

3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by Paragraph IV of this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph VII.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee

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has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; *provided, however*, the Commission may extend the divestiture period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to RID or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best 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 at no minimum price. The divestiture shall be made in the manner and to an acquirer as set out in Paragraph IV of this Order; *provided, however*, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; provided further, however, that Respondents shall select such entity within five (5) business days of receiving notification of the Commission's approval.

7. The 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

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court may set. The 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 trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the trustee's power shall be terminated. The compensation of the trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture all of Respondents' RID Divestiture Assets.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph VII.B. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

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11. The trustee shall have no obligation or authority to operate or maintain the RID Divestiture Assets.

12. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee=s efforts to accomplish the divestiture.

VIII.**IT IS FURTHER ORDERED** that:

A. Within thirty (30) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraphs II, III, IV, and V.A. of this 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 this Order. Respondents shall submit at the same time a copy of their report concerning compliance with this Order to the Interim Trustee if any Interim Trustee has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II through V of the Order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.

B. One (1) year from the date this Order becomes final, annually for the next five (5) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

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IX.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order.

X.

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 with reasonable notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours of Respondents 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; and

B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on July 27, 2020.

By the Commission.

Appendices

APPENDIX I (non-public)
Celexa Co-Promotion Agreement

APPENDIX II. [non-public]
Amendment to Celexa Co-Promotion Agreement

APPENDIX III. [non-public]
Celexa Termination Agreement

APPENDIX IV. [non-public]
Cognex Divestiture Agreement

APPENDIX V. [non-public]
OSI/Pfizer Collaboration Agreements (1986, 1991 and 1996)

Appendix VI [non-public]
OSI/Pfizer License Agreements (1990 and 1996)

Appendices

Appendix VII (non-public)
EGFr-tk Divestiture Agreement

Appendix VIII (non-public)
RID Divestiture Agreement

Appendix IX (public)
Key Employees

PARKE-DAVIS CELEXAJ TEAM MEMBERS

<u>John Woychick</u>	<u>VP NE CBU</u>
<u>Doug Saltel</u>	<u>VP CNS Marketing</u>
<u>Tim George</u>	<u>Dir. Strategic Alliances</u>
<u>Katie MacFarlane</u>	<u>Dir. Marketing</u>
<u>Garry Callendar</u>	<u>Dir., Strategic Planning & Information Management</u>
<u>Jim LaMartina</u>	<u>Dir., Sales Training</u>
<u>Scott Van Acker*</u>	<u>Dir., Health Care Management (Field)</u>
<u>Rich Weiss *</u>	<u>Dir., Health Care Management (Marketing)</u>
<u>Ken Massey</u>	<u>Sr. Dir., Medical & Scientific Affairs</u>
<u>Victor Delimata</u>	<u>Sr. Product Manager-CNS Disease Team</u>
<u>Patrick Runde*</u>	<u>Sr. Marketing Manager</u>
<u>George Cavic*</u>	<u>VP Health Care Management</u>
<u>John Richter*</u>	<u>Dir., CNS & Anti-Infective Marketing, Health Care Mgmt.</u>
<u>Ginny Ludwig</u>	<u>Sr. Mgr., Health Care Mgmt.</u>
<u>Ron Preblich, Pharm.D.</u>	<u>Mgr., Health Care Economics</u>

Appendices

<u>Debra Schramm *</u>	<u>Dir., Contracts and Pricing, Health Care Management</u>
<u>Lynne Fredericks</u>	<u>Market Research</u>
<u>Rick Wantees</u>	<u>Market Research</u>
<u>Lene Ulrich*</u>	<u>VP, SC CBU</u>
<u>John Howard*</u>	<u>VP, NC CBU</u>
<u>Daniel Green*</u>	<u>VP, West CBU</u>
<u>Les Slater*</u>	<u>VP, SE CBU</u>
<u>Laura Johnson*</u>	<u>Marketing Mgr., NE CBU</u>
<u>Andrew Purcell</u>	<u>VP, West CBU</u>
<u>Janice Hall</u>	<u>Senior Product Manager</u>
<u>Allison Fannon</u>	<u>Product Manager</u>
<u>Tim Amato</u>	<u>Product Manager</u>

* These individuals are signing as to confidentiality only

Appendix X (public)
Key Employee Confidentiality Agreement

I, _____, hereby acknowledge that I will maintain all Celexa Know-how (as defined in the Consent Order, including, without limitation, all field experience) regarding Celexa strictly confidential, including from all other employees, executives, or other personnel of Warner-Lambert, its Affiliates and successors.

I also hereby agree that I will not be involved in the marketing, sale, or promotion of Zoloft or any SSRI/SNRI Product (as defined in the Consent Order) other than Celexa through March 31, 2001.

Appendices

Appendix XI (public)
Warner/Pfizer Notice**I.**

Pursuant to a Consent Order entered into between Warner-Lambert Company, Pfizer Inc. and the Federal Trade Commission on May 24, 2000, members of the Warner-Lambert PC-2 salesforce, CNS, Hospital, Managed Care, and Governmental salesforces, who directly participated in the marketing of Celexa within the twelve month period immediately prior to the termination date of April 30, 2000, are prohibited from performing services for Pfizer, or any affiliate of Pfizer, in connection with the marketing or promotion of Zoloft through November 30, 2000. In addition, such employees are prohibited from accompanying Pfizer personnel on Zoloft detailing calls.

In addition, these employees shall maintain all Celexa Know-how (as defined in the Consent Order) in their possession strictly confidential from any person or entity, including from all other employees, executives, or other personnel of Warner-Lambert, its Affiliates and successors.

II.

Pursuant to a Consent Order entered into between Warner-Lambert Company, Pfizer Inc. and the Federal Trade Commission on May 24, 2000, Morris Plains New Jersey and Warner-Lambert Central Business Unit-based Warner-Lambert marketing executives and personnel and administrative and sales personnel, who directly participated in the marketing of Celexa within the twelve month period immediately prior to the termination date of April 30, 2000, are prohibited from performing services for Pfizer, or any affiliate of Pfizer, in connection with the marketing or promotion of Zoloft through March 31, 2001. In addition, such employees are prohibited from accompanying Pfizer personnel on Zoloft detailing calls.

Analysis to Aid Public Comment

In addition, such employees shall maintain all Celexa Know-how (as defined in the Consent Order) strictly confidential from any person or entity, including from all other employees, executives, or other personnel of Warner-Lambert, its Affiliates and successors.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (ACommission@) has accepted, subject to final approval, an agreement containing a proposed Consent Order from Pfizer Inc. (APfizer@) and Warner-Lambert Company (AWarner@) which is designed to remedy the anticompetitive effects of the merger of Pfizer and Warner. Under the terms of the agreement, the companies would be required to: (1) terminate Warner=s agreement with Forest Laboratories, Inc. (AForest@) to co-promote the antidepressant Celexa; (2) divest Pfizer=s RID pediculicide (used to treat head lice) business to Bayer Corporation (ABayer@); (3) divest all of Warner=s assets relating to the Alzheimer=s drug, Cognex, to First Horizon Pharmaceutical Corporation; and (4) transfer and surrender to OSI Pharmaceuticals, Inc. (AOSI@) all of Pfizer=s assets relating to the Epidermal Growth Factor receptor tyrosine kinase inhibitor, CP-358,774, for the treatment of cancer.

The proposed Consent Order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement=s proposed Consent Order.

In their merger agreement of February 6, 2000, Pfizer and Warner propose to combine their two companies in a transaction

Analysis to Aid Public Comment

valued at approximately \$90 billion. Thereafter, the merged entity will be renamed Pfizer Inc. The proposed Complaint alleges that the proposed merger, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. ' 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. ' 45, in the markets for: (1) SSRI/SNRI antidepressants; (2) pediculicides; (3) drugs for the treatment of Alzheimer=s disease; and (4) EGFr-tk inhibitors for the treatment of cancer. The proposed Consent Order would remedy the alleged violations by replacing the lost competition that would result from the merger in each of these markets.

SSRI/SNRI Antidepressants

Selective serotonin reuptake inhibitors (ASSRIs@) and selective norepinephrine reuptake inhibitors (ASNRIs@) are used to treat depression. Both SSRIs and SNRIs have the same effect on the neurotransmitter serotonin, which is believed to be an important mood regulator. SSRIs and SNRIs are favored by physicians because they offer once-a-day dosing and a lower side effect profile compared to earlier generation antidepressants. Annual U.S. sales of SSRI/SNRI antidepressants total approximately \$7 billion.

The market for SSRI/SNRIs is highly concentrated. Pfizer and Warner compete directly against each other in the market for SSRI/SNRI antidepressants. Pfizer markets Zoloft, while Warner co-promotes Celexa with Forest. In 1999, Pfizer=s Zoloft was the second-leading SSRI, with sales in the United States of over \$2 billion, while Warner and Forest=s Celexa was the fastest-growing SSRI with sales of \$210 million.

There are significant barriers to entry into the SSRI/SNRI market. New entry into the manufacture and sale of drugs for the treatment of depression is difficult, expensive and time-consuming. It requires identifying a preclinical compound,

Analysis to Aid Public Comment

performing animal safety tests, clinically developing the product in humans, and submitting a New Drug Application for approval by the Food and Drug Administration (AFDA@). In order to enter the market, a firm must incur substantial sunk costs to research, develop, manufacture and sell a SSRI/SNRI. De novo entry has been estimated to take between 8-12 years and cost upwards of \$250 million. New entry sufficient to deter or counteract the anticompetitive effects of the merger would not occur in a timely manner. Nor would such entry be likely to occur in the face of a 5 to 10 percent increase in the prices of these drugs.

The proposed merger of Pfizer and Warner is likely to cause significant anticompetitive effects in the U.S. SSRI/SNRI market by increasing the likelihood of coordinated interaction among the remaining firms in the market and by eliminating Celexa, an aggressive new market entrant, as an independent competitor. As a result, American consumers of these drugs would likely pay higher prices and have fewer alternatives for SSRI/SNRI drugs for the treatment of depression.

The proposed Consent Order maintains competition in the SSRI/SNRI market by requiring that: (1) Warner terminate, absolutely and in good faith, the Celexa Co-Promotion Agreement and Celexa Amendment in accordance with the terms of the Celexa Termination Agreement with Forest; (2) Warner return all confidential information regarding Celexa to Forest; (3) the former Warner sales personnel who participated in the marketing of Celexa maintain the confidentiality of this information; and (4) the former Warner sales personnel involved in marketing Celexa be prohibited from selling Zoloft for a period of time.

Pediculicides

Over-the-counter (AOTC@) pediculicides are used to treat head-lice infestation. While prescription products and home remedies may also be used for the treatment of head lice, OTC pediculicides are more effective, cheaper and safer than any

Analysis to Aid Public Comment

available alternatives. Annual U.S. sales of OTC pediculicides total over \$150 million.

The market for OTC pediculicides is highly concentrated. Pfizer and Warner are the two leading suppliers of OTC pediculicides in the United States, with approximately 30 percent of the market each. Thus, as a result of the merger, Pfizer would have a 60 percent share of the market. There are significant barriers to entry and expansion into this market. In order to enter the market, a firm must incur substantial sunk costs to research, develop, manufacture and sell OTC pediculicides. Existing private label and small branded suppliers of pediculicides are not likely to effectively reposition themselves in order to counteract a post-merger price increase because of their minimal market presence, lack of scale economies and lack of consumer brand loyalty. The proposed merger is likely to lead to unilateral anticompetitive effects in the OTC pediculicide market by eliminating the actual, direct, and substantial competition between Pfizer and Warner and allowing the combined firm to raise prices.

The proposed Consent Order remedies the merger's anticompetitive effects by requiring that Pfizer divest its entire RID brand of pediculicide and all assets associated with this product line to Bayer.

Drugs for the Treatment of Alzheimer's Disease

Pfizer and Warner market the only two products sold in the United States for the treatment of Alzheimer's disease, Aricept and Cognex, respectively. Aricept dominates the market with more than 98 percent market share, while Cognex accounts for the remainder of the market. While the FDA has recently approved one new product, Novartis AG's Exelon, for the treatment of Alzheimer's disease, Novartis has yet to market its product. Even taking into account Novartis's entry into the market, the market will still be highly concentrated. There are significant

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barriers to entry into this market. New entry into the manufacture and sale of drugs for the treatment of Alzheimer=s disease is difficult, expensive and time-consuming because of the lengthy development periods, the need for FDA approval, and the substantial sunk costs required to research, develop, manufacture and sell these drugs. As a result, entry likely to deter or counteract the likely anticompetitive effects of the proposed merger is unlikely.

The merger would result in Pfizer=s having a monopoly in the market for drugs for the treatment of Alzheimer=s disease, with that monopoly position lessening only slightly when Exelon is launched in the United States. Accordingly, the merger would increase Pfizer=s dominant position in the market, allowing it to increase prices and potentially eliminate Cognex, the smaller competitor, from the market. The proposed Consent Order remedies the merger=s anticompetitive effects by requiring Warner to divest Cognex to First Horizon Pharmaceutical Corporation.

EGFr-tk Inhibitors for the Treatment of Cancer

Pfizer and Warner are developing Epidermal Growth Factor receptor tyrosine kinase (AEGFr-tk@) inhibitors for the treatment of solid cancerous tumors. Solid tumor cancer targets include head and neck, non-small-cell lung, breast, ovarian, pancreatic and colorectal cancers. Currently, over 1.2 million Americans are diagnosed with solid tumor cancers each year. It is anticipated that EGFr-tk inhibitors will be used in conjunction with surgery, radiation and chemotherapy to treat cancer patients.

EGFr-tk inhibitors target the EGFr oncogene that regulates cancer cell growth. The EGFr has been identified as being over-expressed (too prevalent) in as many as 700,000 of the 1.2 million Americans diagnosed with a solid tumor cancer each year. Patients with an over-expression of EGFr are believed to have a worse prognosis than other cancer patients. Accordingly, scientists have developed drugs that attempt to inhibit the EGFr

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activity of cell division signal transduction that results in cancer cell proliferation.

The most advanced EGFr-tk inhibitors include those being developed by Pfizer and Warner. Pfizer and Warner are two of only a few companies in clinical development of EGFr-tk inhibitors for solid tumor cancers. There are significant barriers to entry into the market. In order to enter the market, a firm must incur substantial sunk costs to research, develop, manufacture and sell EGFr-tk inhibitors.

The proposed merger is likely to create anticompetitive effects in the EGFr-tk inhibitor market by potentially eliminating one of the few research and development efforts in this area. As a result of the merger, the combined entity could unilaterally delay, terminate or otherwise fail to develop one of the two competing EGFr-tk drugs, resulting in less product innovation, fewer choices, and higher prices for consumers.

To resolve these concerns, the proposed Consent Order requires Pfizer to return its EGFr-tk inhibitor, CP-358,774, to its development partner, OSI. OSI holds a contractual right to obtain CP-358,774 should Pfizer terminate development efforts. Thus, while other companies have expressed interest in acquiring the rights to CP-358,774, none may do so without the prior approval of OSI.

The proposed Consent Order maintains competition in the research and development of EGFR-tk inhibitors for the treatment of cancer by requiring that Pfizer fulfill its obligations under the May 23, 2000 agreement between Pfizer and OSI to (1) transfer and surrender its rights to CP-358,774 to OSI; (2) grant OSI a royalty-free, irrevocable worldwide license, including the right to sublicense, to all of its rights in, and to, the patents currently owned jointly by OSI and Pfizer relating to EGFr-tk inhibitors; (3) complete, at Pfizer's cost, ongoing clinical trials of CP-358,774; (4) provide OSI with a manufacturing and supply

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agreement for the continued supply of CP-358,774, pending transfer of manufacturing technology to a new manufacturer; (5) assume liability for all completed clinical trials; and (6) transfer all know-how and technology relating to CP-358-774 to OSI. The Consent Order also provides for an Interim Trustee to be appointed to oversee Pfizer=s obligations under the Order and to ensure the continued development and viability of CP-358,774.

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the proposed Consent Order or to modify its terms in any way.

Complaint

IN THE MATTER OF

SWISHER INTERNATIONAL, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3964; File No. 0023199
Complaint, August 18, 2000--Decision, August 18, 2000

This consent order addresses Swisher's cigar advertising. The complaint alleges that the failure to disclose that regular cigar smoking can cause serious adverse health effects is both unfair and deceptive in violation of Section 5 of the FTC Act. The consent order requires the respondents to make a clear and conspicuous disclosure using specified warning statements on cigar labels and in advertising.

Participants

For the Commission: *Mamie Kresses, Rosemary Rosso, Michael Ostheimer, Anne V. Maher, C. Lee Peeler, Marc Winerman, Christian S. White, and BE.*

For the Respondents: *Andrew L. Zausner and Peter J. Kadzik, Dickstein Shapiro Morin & Oshinsky.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Swisher International, Inc., a corporation ("respondent@), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Swisher International, Inc., is a Delaware corporation with its principal office or place of business at 459 East 16th Street, Jacksonville, FL 32206-3063.
2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including cigars.