

Complaint

IN THE MATTER OF

**MYLAN INC., AGILA SPECIALTIES
GLOBAL PTE. LIMITED, AGILA SPECIAL
PRIVATE LIMITED, AND STRIDES ARCOLAB
LIMITED**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

Docket No. C-4413; File No. 131 0112

Complaint, September 26, 2013 – Decision, December 12, 2013

This consent order addresses the \$1.85 billion acquisition by Mylan Inc. (“Mylan”) of Agila Specialties Global Pte. Limited (“Agila”) from Strides Arcolab, Ltd. The complaint alleges that the acquisition would violate Section 7 of the Clayton Act by substantially lessening competition in eleven product markets relating to generic injectable pharmaceutical drugs. Injectable drugs are administered intravenously, usually via a syringe or hollow needle. Generic versions of injectable drugs are usually launched after a branded product’s patents have expired. As the number of generic suppliers increases, prices for these generic drugs generally decrease. The complaint alleges that Mylan and Agila are two of a limited number of current or likely future competitors in several markets for generic injectable pharmaceutical drugs. Specifically, the complaint alleges that the acquisition would eliminate existing competition in the market for the following six generic drugs: (1) amiodarone hydrochloride injection, an anti-arrhythmic heart drug used to treat patients with frequently recurring ventricular fibrillation or unstable ventricular tachycardia; (2) etomidate injection, an anesthetic; (3) fluoruracil injection, used to treat cancer; (4) labetalol hydrochloride injection, used to treat hypertension; (5) mesna injection, used to prevent urinary tract damage; and (6) methotrexate sodium, used to treat types of pediatric cancer. The complaint further alleges that the acquisition would reduce future competition by allowing the combined company to forego or delay the launch of generic products in the following four drug markets: (1) acetylcysteine, used to prevent or minimize liver damage caused by acetaminophen overdose; (2) fomepizole, which is used to treat accidental poisoning caused by ethylene glycol or methanol; (3) ganciclovir, an antiviral drug used to treat patients with weakened immune systems to slow the growth of a form of herpes that can lead to blindness; and (4) meropenem, an antibiotic used to treat serious bacterial infections. The complaint further alleges that the acquisition likely would reduce competition in the future market for generic mycophenolate mofetil injection, which is currently available as a branded drug. Mycophenolate mofetil is used in transplant medicine to reduce the chance of organ transplant rejection. Because Mylan and Agila would likely be among a limited number of suppliers when generic drugs enter the market, the acquisition is likely to reduce the number of generic competitors or otherwise reduce important price competition. The consent

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order requires Mylan to divest either Mylan or Agila products in the following markets and to the following buyers: (a) fluorouracil and methotrexate sodium preservative-free injections to Intas Pharmaceuticals Ltd.; (b) Mylan's etomidate, ganciclovir, meropenem, and mycophenolate mofetil injections, as well as Agila's amiodarone hydrochloride and fomepizole injections to JHP Pharmaceuticals, LLC; and (c) Agila's acetylcysteine and mesna injections to Sagent Pharmaceuticals. The order also requires Mylan to release all of its rights relating to labetalol hydrochloride injection to Gland Pharma Ltd. Finally, the order contains supply and technology provisions to ensure each acquirer can immediately and effectively compete in the marketplace.

Participants

For the *Commission*: David L. Inglefield, Amy S. Posner, and Hyun Lee Son.

For the *Respondents*: David Wales, Jones Day; and Matthew Hendrickson and Steven Sunshine, Skadden, Arps, Slate, Meagher & Flom LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Mylan Inc. ("Mylan"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Agila Specialties Global Pte. Limited and Agila Specialties Private Limited (collectively, "Agila"), entities subject to the jurisdiction of the Commission, from Strides Arcolab Ltd. ("Strides") in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and that such acquisition, if consummated, would violate 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, 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. RESPONDENTS

1. Respondent Mylan is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its corporate office and principal place of

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business located at 1500 Corporate Drive, Canonsburg, Pennsylvania 15317.

2. Respondent Agila Specialties Global Pte. Limited, a wholly owned subsidiary of Strides, is a corporation organized, existing, and doing business under and by virtue of the laws of the Republic of Singapore, with its corporate office and principal place of business located at 3 Tuas South Avenue 4, Singapore 637610.

3. Respondent Agila Specialties Private Limited, a wholly owned subsidiary of Strides, is a corporation organized, existing, and doing business under and by virtue of the laws of the Republic of India, having its corporate office and principal place of business at Strides House, Bilekahalli, Bannerghatta Road, Bangalore 560-076, India.

4. Respondent Strides is a corporation organized, existing, and doing business under and by virtue of the laws of India, having its corporate office and principal place of business at Strides House, Bilekahalli, Bannerghatta Road, Bangalore 560-076, India.

5. Each Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

6. Under the terms of a Sale and Purchase Agreement with an effective date of February 27, 2013 (“Agreement”), Mylan proposes to acquire all of the voting securities of Agila for approximately \$1.85 billion from Strides (the “Acquisition”). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

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III. THE RELEVANT PRODUCT MARKETS

7. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the development, license, manufacture, marketing, distribution, and sale of the following generic injectable pharmaceutical products:

- a. amiodarone hydrochloride injection;
- b. etomidate injection;
- c. fluorouracil injection;
- d. labetalol hydrochloride injection;
- e. mesna injection;
- f. methotrexate sodium preservative-free injection;
- g. acetylcysteine injection;
- h. fomepizole injection;
- i. ganciclovir injection;
- j. meropenem injection; and
- k. mycophenolate mofetil injection.

IV. THE RELEVANT GEOGRAPHIC MARKET

8. For the purposes of this Complaint, the United States is the relevant geographic market in which to assess the competitive effects of the Acquisition in each of the relevant lines of commerce.

V. THE STRUCTURE OF THE MARKETS

9. Amiodarone hydrochloride injection is an anti-arrhythmic cardiac drug of last resort used to treat patients with frequently recurring ventricular fibrillation or unstable ventricular

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tachycardia. The market for amiodarone hydrochloride injection is highly concentrated with only three current suppliers for the drug – Mylan, Fresenius Kabi AG (“Fresenius”), and Hikma Pharmaceuticals PLC. Mylan has a 60% share of the market. Agila has an approved Abbreviated New Drug Application (“ANDA”) from the U.S. Food and Drug Administration (“FDA”) and is about to enter this market, as is one other firm. Thus, the Acquisition would reduce the number of suppliers of generic amiodarone hydrochloride injection from five to four.

10. Etomidate injection is an anesthetic agent used to induce general anesthesia and sedation for surgical procedures. There are currently four significant suppliers in this highly concentrated market – Mylan, Agila (which distributes its product through Pfizer Inc. and Sagent), Hospira, Inc. (“Hospira”), and American Regent, Inc. The Acquisition would substantially increase concentration in this market and reduce the number of suppliers of generic etomidate injection from four to three.

11. Fluorouracil injection treats colon, rectal, breast, stomach, and pancreatic cancers. Four firms currently supply fluorouracil injection in this highly concentrated market – Mylan, Fresenius, Teva Pharmaceutical Industries Ltd. (“Teva”), and Sandoz International GmbH. (“Sandoz”). Agila is the only other company that currently holds an approved ANDA to sell generic fluorouracil in the United States. As a result, the Acquisition would reduce the number of firms capable of supplying generic fluorouracil injection from five to four.

12. Labetalol hydrochloride injection treats severe hypertension. The market for labetalol hydrochloride injection is highly concentrated. Only Mylan, Agila, Hospira, Akorn, Inc., and Apotex Inc. have approved ANDAs and manufacturing facilities currently capable of producing generic labetalol hydrochloride injection. The Acquisition would reduce the number of firms capable of supplying generic labetalol hydrochloride injection from five to four.

13. Mesna injection is a detoxifying agent used to prevent damage to the urinary tract caused by ifosfamide, a third-line chemotherapy drug used to treat germ cell testicular cancer.

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There are four current, significant suppliers of generic mesna injection – Mylan, Agila, Fresenius, and Baxter International Inc. The Acquisition would increase concentration in this market substantially, and reduce the number of current suppliers of generic mesna injection from four to three.

14. Methotrexate sodium preservative-free injection treats several types of pediatric cancers, as well as certain autoimmune disorders such as rheumatoid arthritis and multiple sclerosis. Five firms currently supply the market with methotrexate sodium preservative-free injection – Mylan, Agila, Fresenius, Teva, and Hospira. The Acquisition would reduce the number of current suppliers of the drug from five to four.

15. Acetylcysteine injection prevents or minimizes liver damage resulting from acetaminophen overdose. There are two generic acetylcysteine injection products currently on the market, and Mylan and Agila are two of only a limited number of firms that have generic products in development. Therefore, the Acquisition would reduce the number of likely future suppliers of generic acetylcysteine injection.

16. Injectable fomepizole treats accidental poisoning caused by ethylene glycol or methanol ingestion. Three firms currently supply the highly concentrated market for generic fomepizole injection – Mylan, X-Gen Pharmaceuticals, Inc., and Sandoz. Agila is developing its own generic fomepizole injection product and likely would be the next firm to enter the market. As a result, the Acquisition would reduce the number of suppliers of generic fomepizole injection in the near future.

17. Ganciclovir injection is an antiviral medication used to treat patients with weakened immune systems, such as patients with HIV-AIDS and transplant recipients, to slow the growth of cytomegalovirus, a form of herpes virus that can lead to blindness. Currently, Roche Palo Alto, LLC (“Roche”) sells a branded product, Cytovene, and Fresenius is the only generic competitor. Mylan and Agila are two of only a limited number of firms that have this drug in development. Therefore, the Acquisition would reduce the number of likely future suppliers of generic ganciclovir injection.

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18. Meropenem injection is an ultra-broad spectrum antibiotic used as a last resort to treat serious bacterial infections in an intensive care setting. There are currently four suppliers of the drug – AstraZeneca PLC, Fresenius, Hospira, and Sandoz. All four of these companies, however, obtain their supplies of meropenem from only two manufacturing facilities. Mylan and Agila are two of only a limited number of firms that have a generic meropenem injection product in development and plan to procure their meropenem supplies from different manufacturing facilities. As a result, the Acquisition would reduce the number of marketers, as well as the sources of manufacturing, of generic meropenem injection in the future.

19. Mycophenolate mofetil injection is an immunosuppressant used in transplant medicine to subdue T-cell and B-cell production, reducing the risk of transplant rejection. The market for generic mycophenolate mofetil injection does not yet exist. Roche currently sells a branded version of the product, CellCept. When generic entry occurs, Mylan and Agila would likely be among a limited number of suppliers. Thus, the Acquisition would reduce the number of likely future suppliers of generic mycophenolate mofetil injection.

VI. ENTRY CONDITIONS

20. Entry into the relevant markets described in Paragraphs 7 and 8 would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. De novo entry would not take place in a timely manner because the combination of drug development times and FDA approval requirements would delay entry by at least two years. Although a limited number of firms other than Respondents plan to begin competing in some relevant markets in the future, such entry would not be sufficient to prevent the competitive harm likely to result from the Acquisition. In addition, no other entry is likely to occur for a substantial amount of time that would eliminate the price increases that will occur after consummation of the Acquisition.

VII. EFFECTS OF THE ACQUISITION

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21. The effects of the Acquisition, if consummated, would likely be to substantially lessen competition and 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 eliminating actual, direct, and substantial competition between Mylan and Agila and reducing the number of competitors in the markets for (1) amiodarone hydrochloride injection; (2) etomidate injection; (3) fluorouracil injection; (4) labetalol hydrochloride injection; (5) mesna injection; and (6) methotrexate sodium preservative-free injection, thereby: (a) increasing the likelihood that Mylan will be able to unilaterally exercise market power in these markets; (b) increasing the likelihood and degree of coordinated interaction between or among the remaining competitors; and (c) increasing the likelihood that customers would be forced to pay higher prices; and
- b. by eliminating future competition between Mylan and Agila and reducing the number of generic competitors in the markets for (1) acetylcysteine injection; (2) fomepizole injection; (3) ganciclovir injection; (4) meropenem injection; and (5) mycophenolate mofetil injection, thereby: (a) increasing the likelihood that the combined entity would forego or delay the launch of these products, and (b) increasing the likelihood that the combined entity would delay, eliminate, or otherwise reduce the substantial additional price competition that would have resulted from an additional supplier of these products.

VIII. VIOLATIONS CHARGED

22. The Agreement described in Paragraph 6 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

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23. The Acquisition described in Paragraph 6, 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 twenty-sixth day of September 2013, issues its Complaint against said Respondent.

By the Commission.

Order to Maintain Assets

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Mylan Inc. (“Mylan”) of the voting securities of Respondents Agila Specialties Global Pte. Limited and Agila Specialties Private Limited (collectively “Agila”) from Respondent Strides Arcolab Limited, and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of 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 to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Mylan Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its headquarters address located at 1500 Corporate Drive, Suite 400, Canonsburg, Pennsylvania 15317.

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2. Respondent Agila includes Agila Specialties Global Pte. Limited, a corporation organized, existing and doing business under and by virtue of the laws of the Republic of Singapore with its headquarters address located at 3 Tuas South Avenue 4, Singapore 637610, and Agila Specialties Private Limited, a corporation organized, existing and doing business under and by virtue of the laws of the Republic of India with its headquarters address located at Strides House, Bilekahali, Bannerghatta Road, Bangalore India 560 076.
3. Respondent Strides Arcolab Limited is a corporation organized, existing and doing business under and by virtue of the laws of the Republic of India with its headquarters address located at 201, Devavrata, Sector 17, Vashi, New Mumbai, India 400705. Strides Arcolab Limited is the ultimate parent entity of Agila Specialties Global Pte. Ltd and Agila Specialties Private Limited.
4. The Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final and effective, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Mylan” means Mylan Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Mylan Inc., and the respective directors, officers, employees,

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agents, representatives, successors, and assigns of each. After the Acquisition, Mylan shall include Agila.

- B. “Agila” means: (i) Agila Specialties Global Pte. Limited, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Agila Specialties Global Pte. Limited, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each; and (ii) Agila Specialties Private Limited, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Agila Specialties Private Limited, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Strides” means Strides Arcolab Limited, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Strides Arcolab Limited, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Respondents” means Mylan, Agila, and Strides, individually and collectively. After the Acquisition, “Respondents” means Mylan and Agila, individually and collectively.
- E. “Commission” means the Federal Trade Commission.
- F. “Decision and Order” means the:
 - 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and

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2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.
- G. “Divestiture Product Business(es)” means the Business of Respondents within the Geographic Territory specified in the Decision and Order related to each of the Divestiture Products to the extent that such Business is owned, controlled, or managed by the Respondents and the assets related to such Business to the extent such assets are owned by, controlled by, managed by, or licensed to, the Respondents.
- H. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph III of the Decision and Order.
- I. “Orders” means the Decision and Order and this Order to Maintain Assets.

II.

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

- A. Until Respondents fully transfer and deliver each of the respective Divestiture Product Assets to an Acquirer, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of each of the related Divestiture Product Businesses, to minimize any risk of loss of competitive potential for such Divestiture Product Businesses, and to prevent the destruction, removal, wasting, deterioration, or impairment of such Divestiture Product Businesses except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair the Divestiture Product Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability,

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marketability or competitiveness of the related Divestiture Product Businesses.

- B. Until Respondents fully transfer and deliver each of the respective Divestiture Product Assets to an Acquirer, Respondents shall maintain the operations of the related Divestiture Product Businesses in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business) and/or as may be necessary to preserve the marketability, viability, and competitiveness of such Divestiture Product Businesses and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; the High Volume Accounts; customers; Agencies; employees; and others having business relations with each of the respective Divestiture Product Businesses. Respondents' responsibilities shall include, but are not limited to, the following:
1. providing each of the respective Divestiture Product Businesses with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for such Divestiture Product Business;
 2. continuing, at least at their scheduled pace, any additional expenditures for each of the respective Divestiture Product Businesses authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all research, Development, manufacturing, distribution, marketing and sales expenditures;
 3. providing such resources as may be necessary to respond to competition against each of the Divestiture Products and/or to prevent any diminution in sales of each of the Divestiture Products during and after the Acquisition process

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and prior to the complete transfer and delivery of the related Divestiture Product Assets to an Acquirer;

4. providing such resources as may be necessary to maintain the competitive strength and positioning of each of the Divestiture Products that were marketed or sold by Respondents prior to February 27, 2013, at the related High Volume Accounts;
 5. making available for use by each of the respective Divestiture Product Businesses funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such business;
 6. providing each of the respective Divestiture Product Businesses with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of such Divestiture Product Business; and
 7. providing such support services to each of the respective Divestiture Product Businesses as were being provided to such business by Respondents as of the date the Consent Agreement was signed by Respondents.
- C. Until Respondents fully transfer and deliver the each of the respective Divestiture Product Assets to an Acquirer, Respondents shall maintain a work force at least as equivalent in size, training, and expertise to what has been associated with the Divestiture Products for the relevant Divestiture Product's last fiscal year.
- D. For each of the Divestiture Products that is a Contract Manufacture Product, until the Closing Date for the related Divestiture Product Assets, Respondents shall provide all the related Divestiture Product Core Employees with reasonable financial incentives to

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continue in their positions and to research, Develop, and manufacture the relevant Divestiture Products consistent with past practices and as may be necessary to preserve the marketability, viability and competitiveness of such Divestiture Products pending divestiture. Such incentives shall include a continuation of all employee benefits offered by Respondents until the Closing Date for the divestiture of the above-described assets has occurred, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by Law), and additional incentives as may be necessary to prevent any diminution of the relevant Divestiture Product=s competitiveness.

E. Respondents shall:

1. for each Divestiture Product, for a period of six (6) months from the Closing Date or until the hiring of twenty (20) Divestiture Product Core Employees by the relevant Acquirer, whichever occurs earlier, provide the relevant Acquirer with the opportunity to enter into employment contracts with the Divestiture Product Core Employees related to the Divestiture Products and assets acquired by such Acquirer. Each of these periods is hereinafter referred to as the “Divestiture Product Core Employee Access Period(s)”;
2. not later than the earlier of the following dates: (i) ten (10) days after notice by staff of the Commission to Respondents to provide the Product Employee Information; or (ii) ten (10) days after written request by an Acquirer, provide such Acquirer or Proposed Acquirer(s) with the Product Employee Information related to the Divestiture Product Core Employees. Failure by Respondents to provide the Product Employee Information for any Divestiture Product Core Employee within the time provided herein shall extend the Divestiture Product Core Employee Access Period(s) with

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respect to that employee in an amount equal to the delay;

3. during the Divestiture Product Employee Access Period, not interfere with the hiring or employing by the Acquirer of Divestiture Product Core Employees, and shall remove any impediments within the control of Respondents that may deter these employees from accepting employment with such Acquirer, including, but not limited to, any noncompete provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by such Acquirer. In addition, Respondents shall not make any counteroffer to a Divestiture Product Core Employee who receives a written offer of employment from the Acquirer;

provided, however, that, subject to the conditions of continued employment prescribed in this Order, this Paragraph II.E.3. shall not prohibit Respondents from continuing to employ any Divestiture Product Core Employee under the terms of such employee's employment with Respondents prior to the date of the written offer of employment from the Acquirer to such employee.

- F. Pending divestiture of the Divestiture Product Assets, Respondents shall:
 1. not use, directly or indirectly, any Confidential Business Information related to the Business of the Divestiture Products other than as necessary to comply with the following:
 - a. the requirements of this Order;
 - b. Respondents' obligations to each respective Acquirer under the terms of any related Remedial Agreement; or

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- c. applicable Law;
- 2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer of the particular Divestiture Assets, (ii) other Persons specifically authorized by such Acquirer to receive such information, (iii) the Commission, or (iv) the Interim Monitor (if any has been appointed);
- 3. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the Divestiture Products to the employees associated with the Business related to those Retained Products that are the therapeutic equivalent (as that term is defined by the FDA) of the Divestiture Products; and
- 4. institute procedures and requirements to ensure that the above-described employees:
 - a. do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and
 - b. do not solicit, access or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose.
- G. Not later than thirty (30) days from the earlier of (i) the Closing Date or (ii) the date this Order to Maintain Assets is issued by the Commission, Respondents Mylan and Agila shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Divestiture Products by Respondent Mylan's and Respondent Agila's personnel to all of their employees who (i) may be in possession of such Confidential

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Business Information or (ii) may have access to such Confidential Business Information.

- H. Respondents Mylan and Agila shall give the above-described notification by e mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Closing Date. Respondent Mylan shall provide a copy of the notification to the relevant Acquirer. Respondent Mylan shall maintain complete records of all such notifications at Respondent Mylan's registered office within the United States and shall provide an officer's certification to the Commission stating that the acknowledgment program has been implemented and is being complied with. Respondent Mylan shall provide the relevant Acquirer with copies of all certifications, notifications and reminders sent to Respondent Mylan and Respondent Agila's personnel.
- I. Respondents shall monitor the implementation by its employees and other personnel of all applicable restrictions, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets.
- J. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Divestiture Product Businesses within the Geographic Territory through their full transfer and delivery to an Acquirer, to minimize any risk of loss of competitive potential for the Divestiture Product Businesses within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Product Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

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- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor (“Interim Monitor”) to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondent Mylan has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent Mylan of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent Mylan shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents’ compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
 - 1. The Interim Monitor shall have the power and authority to monitor Respondents’ compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.

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2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Interim Monitor shall serve until the date of completion by the Respondents of the divestiture of all Divestiture Product Assets and the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of this Order and, with respect to each Divestiture Product that is a Contract Manufacture Product, until the earliest of:
 - a. the date the Acquirer of that Divestiture Product (or that Acquirer's Manufacturing Designee(s)) is approved by the FDA to manufacture that Divestiture Product and able to manufacture the Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of the Respondents Mylan and Agila;
 - b. the date the Acquirer of that Divestiture Product notifies the Commission and Respondent Mylan of its intention to abandon its efforts to manufacture such Divestiture Product; or
 - c. the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the relevant Acquirer has abandoned its efforts to manufacture such Divestiture Product;

provided, however, that, with respect to each Divestiture Product, the Interim Monitor's service shall not exceed five (5) years from the Order Date;

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provided further, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.
- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

Order to Maintain Assets

- H. Respondents shall report to the Interim Monitor in accordance with the requirements of the Orders and as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by each Acquirer with respect to the performance of Respondents' obligations under the Orders or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders; provided, however, beginning ninety (90) days after Respondents have filed their final report pursuant to Paragraph VII.B. of the Decision and Order, and ninety (90) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by each Acquirer toward obtaining FDA approval to manufacture each Divestiture Product and obtaining the ability to manufacture each Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondents.
- I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; provided, however, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.

Order to Maintain Assets

- K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- M. The Interim Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets is issued by the Commission, and every sixty (60) days thereafter until Respondents have fully complied with Paragraphs II.A., II.B., II.C., II.D., II.E., II.F.1. - II.F.3, II.G., II.H., II.I., II.J., II.K., and II.L. of the related Decision and Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Orders. Respondents shall submit at the same time a copy of their report concerning compliance with the Orders to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a detailed description of their efforts to comply with the relevant paragraphs of the Orders, including:

- A. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and rights, (ii) transitional services being provided by the Respondents to the relevant Acquirer, and (iii) the agreement(s) to Contract Manufacture; and

Order to Maintain Assets

- B. a detailed description of the timing for the completion of such obligations.

provided, however, that, after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondents pursuant to Paragraph VII of the Decision and Order.

V.

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

- A. any proposed dissolution of a Respondent;
- B. any proposed acquisition, merger or consolidation of a Respondent; or
- C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

VI.

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

- A. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the

Order to Maintain Assets

Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and

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

VII.

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

- A. three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after the divestiture of all of the Divestiture Product Assets, as required by and described in the Decision and Order, has been completed and the Interim Monitor, in consultation with Commission staff and the Acquirer(s), notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions related to such divestitures are complete, or the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Mylan Inc. (“Mylan”) of the voting securities of Respondents Agila Specialties Global Pte. Limited and Agila Specialties Private Limited (collectively “Agila”) from Respondent Strides Arcolab Limited, and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of 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 Decision and Order (“Order”):

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1. Respondent Mylan is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its headquarters address located at 1500 Corporate Drive, Suite 400, Canonsburg, Pennsylvania 15317.
2. Respondent Agila includes (i) Agila Specialties Global Pte. Limited, a corporation organized, existing and doing business under and by virtue of the laws of the Republic of Singapore with its headquarters address located at 3 Tuas South Avenue 4, Singapore 637610, and (ii) Agila Specialties Private Limited, a corporation organized, existing and doing business under and by virtue of the laws of the Republic of India with its headquarters address located at Strides House, Bilekahali, Bannerghatta Road, Bangalore India 560 076.
3. Respondent Strides Arcolab Limited is a corporation organized, existing and doing business under and by virtue of the laws of the Republic of India with its headquarters address located at 201, Devavrata, Sector 17, Vashi, New Mumbai, India 400705. Strides Arcolab Limited is the ultimate parent entity of Agila Specialties Global Pte. Limited and Agila Specialties Private Limited.
4. The Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER**I.**

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

- A. “Mylan” means Mylan Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Mylan

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Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Mylan shall include Agila.

- B. “Agila” means: (i) Agila Specialties Global Pte. Limited, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Agila Specialties Global Pte. Limited, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each; and (ii) Agila Specialties Private Limited, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Agila Specialties Private Limited, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Strides” means Strides Arcolab Limited, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Strides Arcolab Limited, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Respondents” means Mylan, Agila and Strides, individually and collectively. After the Acquisition, “Respondents” means Mylan and Agila, individually and collectively.
- E. “Commission” means the Federal Trade Commission.
- F. “Acquirer(s)” means the following:
 - 1. a Person specified by name in this Order to acquire particular assets or rights that a Respondent(s) is required to assign, grant, license, divest, transfer,

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deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission's determination to make this Order final and effective; or

2. a Person approved by the Commission to acquire particular assets or rights that a Respondent(s) is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- G. "Acetylcysteine Products" means the following: all Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Agila pursuant to ANDA No. 091684, and any supplements, amendments, or revisions thereto.
- H. "Acquisition" means Respondent Mylan's acquisition of the voting securities of Agila. The acquisition is contemplated pursuant to a Sale and Purchase Agreement among Agila Specialties Asia Pte. Limited, Mylan Inc., Arun Kumar and Pronomz Ventures LLP, dated as of February 27, 2013, and a Sale and Purchase Agreement among Strides Arcolab Limited, Mylan Inc., Arun Kumar and Pronomz Ventures LLP, dated as of February 27, 2013, submitted to the Commission.
- I. "Acquisition Date" means the date on which the Acquisition is consummated.
- J. "Agency(ies)" means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Product. The term "Agency" includes, without limitation, the United States Food and Drug Administration (AFDA").
- K. "Amiodarone Products" means the following: all Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Agila

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pursuant to ANDA No. 076394, and any supplements, amendments, or revisions thereto.

- L. “Application(s)” means all of the following: “New Drug Application” (ANDA), “Abbreviated New Drug Application” (AANDA), “Supplemental New Drug Application” (“SNDA”), or AMarketing Authorization Application” (“MAA”), the applications for a Product filed or to be filed with the FDA pursuant to 21 C.F.R. Part 314 et seq., and all supplements, amendments, and revisions thereto, any preparatory work, registration dossier, drafts and data necessary for the preparation thereof, and all correspondence between the Respondent and the FDA related thereto. The term “Application” also includes an “Investigational New Drug Application” (“IND”) filed or to be filed with the FDA pursuant to 21 C.F.R. Part 312, and all supplements, amendments, and revisions thereto, any preparatory work, registration dossier, drafts and data necessary for the preparation thereof, and all correspondence between the Respondent and the FDA related thereto.
- M. “Business” means the research, Development, manufacture, commercialization, distribution, marketing, importation, advertisement and sale of a Product.
- N. “Categorized Assets” means the following assets and rights of the specified Respondent (as that Respondent is identified in the definition of the specified Divestiture Product):
 - 1. all rights to all of the Applications related to the specified Divestiture Product;
 - 2. all Product Intellectual Property related to the specified Divestiture Product that is not Product Licensed Intellectual Property;

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3. all Product Approvals related to the specified Divestiture Product;
4. all Product Manufacturing Technology related to the specified Divestiture Product that is not Product Licensed Intellectual Property;
5. all Product Marketing Materials related to the specified Divestiture Product;
6. all Product Scientific and Regulatory Material related to the specified Divestiture Product;
7. all Website(s) related exclusively to the specified Divestiture Product;
8. the content related exclusively to the specified Divestiture Product that is displayed on any Website that is not dedicated exclusively to the specified Divestiture Product;
9. a list of all of the NDC Numbers related to the specified Divestiture Product, and rights, to the extent permitted by Law:
 - a. to require Respondent to discontinue the use of those NDC Numbers in the sale or marketing of the specified Divestiture Product except for returns, rebates, allowances, and adjustments for such Product sold prior to the Closing Date and except as may be required by applicable Law or as permitted in the applicable Remedial Agreement;
 - b. to prohibit Respondent from seeking from any customer any type of cross- referencing of those NDC Numbers with any Retained Product(s) except for returns, rebates, allowances, and adjustments for such Product sold prior to the Closing Date and except as may be required by applicable Law;

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- c. to seek to change any cross-referencing by a customer of those NDC Numbers with a Retained Product (including the right to receive notification from the Respondent of any such cross-referencing that is discovered by Respondent);
 - d. to seek cross-referencing from a customer of the Respondent's NDC Numbers related to such Divestiture Product with the Acquirer's NDC Numbers related to such Divestiture Product;
 - e. to approve the timing of Respondent's discontinued use of those NDC Numbers in the sale or marketing of such Divestiture Product except for returns, rebates, allowances, and adjustments for such Divestiture Product sold prior to the Closing Date and except as may be required by applicable Law or as permitted in the applicable Remedial Agreement; and
 - f. to approve any notification(s) from Respondent to any customer(s) regarding the use or discontinued use of such NDC numbers by the Respondent prior to such notification(s) being disseminated to the customer(s);
10. all Product Development Reports related to the specified Divestiture Product;
11. at the option of the Acquirer of the specified Divestiture Product, all Product Assumed Contracts related to the specified Divestiture Product (copies to be provided to that Acquirer on or before the Closing Date);
12. all patient registries related to the specified Divestiture Product, and any other systematic active post-marketing surveillance program to collect patient data, laboratory data and

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identification information required to be maintained by the FDA to facilitate the investigation of adverse effects related to the specified Divestiture Product (including, without limitation, any Risk Evaluation Mitigation Strategy as defined by the FDA);

13. for any specified Divestiture Product that has been marketed or sold by a Respondent prior to the Closing Date, a list of all customers and targeted customers for the specified Divestiture Product and a listing of the net sales (in either units or dollars) of the specified Divestiture Product to such customers on either an annual, quarterly, or monthly basis including, but not limited to, a separate list specifying the above-described information for the High Volume Accounts and including the name of the employee(s) for each High Volume Account that is or has been responsible for the purchase of the specified Divestiture Product on behalf of the High Volume Account and his or her business contact information;
14. for each specified Divestiture Product that is a Contract Manufacture Product:
 - a. a list of the inventory levels (weeks of supply) for each customer (i.e., retailer, group purchasing organization, wholesaler or distributor) as of the Closing Date; and
 - b. anticipated reorder dates for each customer as of the Closing Date;
15. at the option of the Acquirer of the specified Divestiture Product and to the extent approved by the Commission in the relevant Remedial Agreement, all inventory in existence as of the Closing Date including, but not limited to, raw materials, packaging materials, work-in-process

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and finished goods related to the specified Divestiture Product;

16. copies of all unfilled customer purchase orders for the specified Divestiture Product as of the Closing Date, to be provided to the Acquirer of the specified Divestiture Product not later than five (5) days after the Closing Date;
17. at the option of the Acquirer of the specified Divestiture Product, all unfilled customer purchase orders for the specified Divestiture Product; and
18. all of the Respondent's books, records, and files directly related to the foregoing;

provided, however, that "Categorized Assets" shall not include: (i) documents relating to the specified Respondent's general business strategies or practices relating to the conduct of its Business of generic pharmaceutical Products, where such documents do not discuss with particularity the specified Divestiture Product; (ii) administrative, financial, and accounting records; (iii) quality control records that are determined not to be material to the manufacture of the specified Divestiture Product by the Interim Monitor or the Acquirer of the specified Divestiture Product; (iv) formulas used to determine the final pricing of any Divestiture Product and/or Retained Products to customers and competitively sensitive pricing information that is exclusively related to the Retained Products; (v) any real estate and the buildings and other permanent structures located on such real estate; and (vi) all Product Licensed Intellectual Property;

provided further, however, that in cases in which documents or other materials included in the assets to be divested contain information: (i) that relates both to the specified Divestiture Product and to Retained Products or Businesses of the specified Respondent and cannot be segregated in a manner that preserves

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the usefulness of the information as it relates to the specified Divestiture Product; or (ii) for which the specified Respondent has a legal obligation to retain the original copies, the Respondent shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer of the specified Divestiture Product, the Respondent shall provide that Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this provision is to ensure that the specified Respondent provides the Acquirer with the above-described information without requiring the Respondent completely to divest itself of information that, in content, also relates to Retained Product(s).

- O. “cGMP” means current Good Manufacturing Practice as set forth in the United States Federal Food, Drug, and Cosmetic Act, as amended, and includes all rules and regulations promulgated by the FDA thereunder.
- P. “Clinical Trial(s)” means a controlled study in humans of the safety or efficacy of a Product, and includes, without limitation, such clinical trials as are designed to support expanded labeling or to satisfy the requirements of an Agency in connection with any Product Approval and any other human study used in research and Development of a Product.
- Q. “Closing Date” means, as to each Divestiture Product, the date on which a Respondent (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey assets related to such Divestiture Product to an Acquirer pursuant to this Order.
- R. “Confidential Business Information” means all information owned by, or in the possession or control of, any Respondent that is not in the public domain and that is directly related to the conduct of the Business

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related to a Divestiture Product(s). The term “Confidential Business Information” excludes the following:

1. information relating to any Respondent’s general business strategies or practices that does not discuss with particularity the Divestiture Products;
2. information specifically excluded from the Divestiture Product Assets conveyed to the Acquirer of the related Divestiture Product(s);
3. information that is contained in documents, records or books of any Respondent that is provided to an Acquirer by a Respondent that is unrelated to the Divestiture Products acquired by that Acquirer or that is exclusively related to Retained Product(s); and
4. information that is protected by the attorney work product, attorney-client, joint defense or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition Laws.

S. “Contract Manufacture” means, the following:

1. to manufacture, or to cause to be manufactured, a Contract Manufacture Product on behalf of an Acquirer;
2. to manufacture, or to cause to be manufactured, a Product that is the therapeutic equivalent (as that term is defined by the FDA) and in the identical dosage strength, formulation and presentation as a Contract Manufacture Product on behalf of an Acquirer;
3. to provide, or to cause to be provided, any part of the manufacturing process including, without limitation, the finish, fill, and/or packaging of a

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Contract Manufacture Product on behalf of an Acquirer.

T. “Contract Manufacture Product(s)” means:

1. the Acetylcysteine Products;
2. the Amiodarone Products;
3. the Etomidate Products; and
4. the Fomepizole Products;
5. the Mesna Products; and
6. any ingredient, material, or component used in the manufacture of any of the foregoing Products including the active pharmaceutical ingredient, excipients or packaging materials;

provided however, that with the consent of the Acquirer of the specified Product, a Respondent may substitute a therapeutic equivalent (as that term is defined by the FDA) form of such Product in performance of that Respondent’s agreement to Contract Manufacture.

U. “Development” means all preclinical and clinical drug development activities (including formulation), including test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting Clinical Trials for the purpose of obtaining any and all approvals, licenses, registrations or authorizations from any Agency necessary for the manufacture, use, storage, import, export, transport, promotion, marketing, and sale of a Product (including any government price or reimbursement approvals), Product approval and registration, and regulatory

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affairs related to the foregoing. “Develop” means to engage in Development.

- V. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. “Direct Cost” to the Acquirer for its use of any of a Respondent’s employees’ labor shall not exceed the average hourly wage rate for such employee;

provided, however, in each instance where: (i) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for a Divestiture Product, “Direct Cost” means such cost as is provided in such Remedial Agreement for that Divestiture Product.

- W. “Divestiture Product(s)” means, the following, individually and collectively:

1. the Acetylcysteine Products;
2. the Amiodarone Products;
3. the Etomidate Products;
4. the Fluorouracil Products;
5. the Fomepizole Products;
6. the Ganciclovir Products;
7. the Labetalol Products;
8. the Meropenem Products;
9. the Mesna Products;
10. the Methotrexate Products; and,

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11. the Mycophenolate Mofetil Products.

- X. “Divestiture Product Assets” means, the following, individually and collectively:
1. the Group A Divestiture Product Assets;
 2. the Group B Divestiture Product Assets;
 3. the Group C Divestiture Product Assets; and
 4. the Lebetalol Divestiture Product Assets.
- Y. “Divestiture Product Core Employees” means the Product Research and Development Employees and the Product Manufacturing Employees related to each Divestiture Product.
- Z. “Divestiture Product License” means a perpetual, non-exclusive, fully paid-up and royalty-free license(s) with rights to sublicense to all Product Licensed Intellectual Property and all Product Manufacturing Technology related to general manufacturing know-how that was owned, licensed, or controlled by the specified Respondent (as that Respondent is identified in the definition of the specified Divestiture Product):
1. to research and Develop the specified Divestiture Products for marketing, distribution or sale within the Geographic Territory;
 2. to use, make, have made, distribute, offer for sale, promote, advertise, or sell the specified Divestiture Products within the Geographic Territory;
 3. to import or export the specified Divestiture Products to or from the Geographic Territory to the extent related to the marketing, distribution or sale of the specified Divestiture Products in the Geographic Territory; and

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4. to have the specified Divestiture Products made anywhere in the World for distribution or sale within, or import into the Geographic Territory;

provided however, that for any Product Licensed Intellectual Property that is the subject of a license from a Third Party entered into by a Respondent prior to the Acquisition, the scope of the rights granted hereunder shall only be required to be equal to the scope of the rights granted by the Third Party to that Respondent.

- AA. “Divestiture Product Releasee(s)” means the following Persons:
1. the Acquirer for the assets related to a particular Divestiture Product;
 2. any Person controlled by or under common control with that Acquirer; and
 3. any Manufacturing Designees, licensees, sublicensees, manufacturers, suppliers, distributors, and customers of that Acquirer, or of such Acquirer-affiliated entities.
- BB. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to Paragraph IV of this Order.
- CC. “Domain Name” means the domain name(s) (universal resource locators), and registration(s) thereof, issued by any Person or authority that issues and maintains the domain name registration. A Domain Name” shall not include any trademark or service mark rights to such domain names other than the rights to the Product Trademarks required to be divested.
- DD. “Drug Master Files” means the information submitted to the FDA as described in 21 C.F.R. Part 314.420 related to a Product.

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- EE. “Etomidate Products” means the following: all Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Mylan pursuant to ANDA No. 091297, and any supplements, amendments, or revisions thereto.
- FF. “Fluorouracil Product(s)” means the following: all Products in Development, manufactured, marketed or sold by Respondent Mylan pursuant to the following ANDAs:
1. ANDA No. 040798;
 2. ANDA No. 040743; and
 3. any supplements, amendments, or revisions thereto.
- GG. “Fomepizole Products” means the following: all Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Agila pursuant to ANDA No. 205283, and any supplements, amendments, or revisions thereto.
- HH. “Ganciclovir Products” means the following: all Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Mylan pursuant to ANDA No. 204950, and any supplements, amendments, or revisions thereto.
- II. “Geographic Territory” shall mean the United States of America, including all of its territories and possessions, unless otherwise specified.
- JJ. “Gland” means Gland Pharma Limited, a corporation organized, existing and doing business under and by virtue of the laws of the Republic of India, with its headquarters address located at 6-3-862, Ameerpet, Hyderabad 500 016 India.

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- KK. “Government Entity” means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.
- LL. “Group A Divestiture Products” means:
1. the Flourouracil Products; and
 2. the Methotrexate Products.
- MM. “Group A Divestiture Product Agreement(s)” means, the following:
1. the Asset Purchase Agreement among Mylan Inc., Accord Healthcare, Inc. and Intas Pharmaceuticals Limited, dated as of August 30, 2013;
 2. the Disclosure Letter to the Asset Purchase Agreement among Mylan Inc., Accord Healthcare, Inc. and Intas Pharmaceuticals Limited, dated as of August 30, 2013;
 3. Amendment No. 3 to Supply Agreement (to that certain the Supply Agreement, dated as of April 28, 2005, between GeneraMedix and Intas Pharmaceuticals, Ltd.) by and between Vinovia Enterprises Limited and Intas Pharmaceuticals, Ltd., which is to be executed on the Closing Date for the Group A Divestiture Assets;
 4. Termination of Technical/ Quality Agreement (in respect of that certain Technical/Quality Agreement effective as of June 28, 2013, by and between Intas Pharmaceuticals Ltd. and Mylan Teoranta d/b/a Mylan Institutional) by and between Intas Pharmaceuticals Ltd. and Mylan Institutional, which is to be executed on the Closing Date for the Group A Divestiture Assets; and

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5. all amendments, exhibits, attachments, agreements, and schedules thereto,

related to the Group A Divestiture Assets that have been approved by the Commission to accomplish the requirements of this Order. The Group A Divestiture Product Agreements are contained in Non-Public Appendix I.

NN. “Group A Divestiture Product Assets” means all rights, title and interest in and to all assets related to the Business within the Geographic Territory of the specified Respondent (as that Respondent is identified in the definition of the respective Divestiture Product) related to each of the respective Group A Divestiture Products, to the extent legally transferable, including, without limitation, the Categorized Assets related to the Group A Divestiture Products.

OO. “Group B Divestiture Products” means the following:

1. the Amiodarone Products;
2. the Etomidate Products;
3. the Fomepizole Products;
4. the Ganciclovir Products;
5. the Meropenem Products; and
6. the Mychophenolate Mofetil Products.

PP. “Group B Divestiture Product Agreement(s)” means, the following:

1. the Asset Purchase Agreement between Mylan Inc. and JHP Pharmaceuticals, LLC, dated as of September 2, 2013;

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2. the Disclosure Letter to Asset Purchase Agreement between Mylan Inc. and JHP Pharmaceuticals, LLC dated as of September 2, 2013;
3. the Supply and Technology Transfer Agreement between Mylan Inc. and JHP Pharmaceuticals, LLC which is to be executed on the Closing Date for the Group B Divestiture Product Assets;
4. the Quality Agreement For Contract Manufacture, Bulk Packaging, Package (Assembly), Testing and Batch Release by and between JHP Pharmaceuticals, LLC and Mylan Inc. which is to be executed on the Closing Date for the Group B Divestiture Product Assets; and
5. all amendments, exhibits, attachments, agreements, and schedules thereto,

related to the Group B Divestiture Assets that have been approved by the Commission to accomplish the requirements of this Order. The Group B Divestiture Product Agreements are contained in Non-Public Appendix I.

QQ. “Group B Divestiture Product Assets: means all rights, title and interest in and to all assets related to the Business within the Geographic Territory of the specified Respondent (as that Respondent is identified in the definition of the respective Divestiture Product) related to each of the respective Group B Divestiture Products, to the extent legally transferable, including, without limitation, the Categorized Assets related to the Group B Divestiture Products.

RR. “Group C Divestiture Products” means:

1. the Acetylcysteine Products; and
2. the Mesna Products.

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SS. “Group C Divestiture Product Agreement(s)” means, the following:

1. the Master Agreement between Mylan Inc. and Sagent Pharmaceuticals, Inc., dated as of August 30, 2013;
2. the 2013 Amendment to Dossier Sale, Manufacture and Supply Agreement (with respect to that certain Dossier Sale, Manufacture and Supply Agreement by and between Sagent Agila LLC and Agila Specialties Private Limited, dated as of September 12, 2007) by and between Sagent Agila LLC and Agila Specialties Private Limited, which is to be executed on the Closing Date for the Group C Divestiture Product Assets;
3. the Supply and Technology Transfer Agreement by and between Sagent Pharmaceuticals, Inc. and Agila Specialties Private Limited, which is to be executed as of the Closing Date for the Group C Divestiture Product Assets;
4. the Bill of Sale Assignment and Assumption Agreement by and between Sagent Agila LLC and Sagent Pharmaceuticals, Inc., which is to be executed on the Closing Date for the Group C Divestiture Product Assets;
5. the Bill of Sale Assignment and Assumption Agreement by and between Agila Specialties Private Limited and Sagent Pharmaceuticals, Inc. which is to be executed on the Closing Date for the Group C Divestiture Product Assets; and,
6. all amendments, exhibits, attachments, agreements, and schedules thereto,

related to the Group C Divestiture Assets that have been approved by the Commission to accomplish the requirements of this Order. The Group C Divestiture

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Product Agreements are contained in Non-Public Appendix I.

- TT. “Group C Divestiture Product Assets” means all rights, title and interest in and to all assets related to the Business within the Geographic Territory of the specified Respondent (as that Respondent is identified in the definition of the respective Divestiture Product) related to each of the respective Group C Divestiture Products, to the extent legally transferable, including, without limitation, the Categorized Assets related to the Group C Divestiture Products.
- UU. “High Volume Account(s)” means any retailer, wholesaler or distributor whose annual or projected annual aggregate purchase amounts (on a company-wide level), in units or in dollars, of a Divestiture Product in the United States of America from the Respondent was, or is projected to be among the top twenty highest of such purchase amounts by the Respondent’s U.S. customers on any of the following dates: (i) the end of the last quarter that immediately preceded the date of the public announcement of the proposed Acquisition; (ii) the end of the last quarter that immediately preceded the Acquisition Date; (iii) the end of the last quarter that immediately preceded the Closing Date for the relevant assets; or (iv) the end of the last quarter following the Acquisition or the Closing Date.
- VV. “Intas” means Intas Pharmaceuticals Ltd., a corporation organized, existing and doing business under and by virtue of the laws of the Republic of India with its headquarters address located at Chinubhai Center, Off. Nehru Bridge, Ashram Road, Ahmedabad, 380009, Gujarat, India.
- WW. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order or Paragraph III of the related Order to Maintain Assets.

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- XX. “JHP” means JHP Pharmaceuticals, LLC, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its headquarters address located at Morris Corporate Center 2, One Upper Pond Road, Building D 3rd Floor, Parsippany, New Jersey 07054.
- YY. “Labetalol Products” means all Products in Development, manufactured, marketed or sold that are the subject of the License, Manufacturing and Supply Agreement, by and between Bioniche Teoranta and Gland Pharma Limited, dated as of January 3, 2012, including without limitation, those Products that are the subject of ANDA No. 090699, and any supplements, amendments, or revisions thereto.
- ZZ. “Labetalol Product Divestiture Assets” means all of Respondent Mylan’s rights, title and interest in and to all assets related to Respondent Mylan’s Business within the Geographic Territory related to each of the respective Labetalol Products to the extent legally transferable, including, without limitation, all such rights acquired or held by Respondent Mylan as a result of the License, Manufacturing and Supply Agreement, by and between Bioniche Teoranta and Gland Pharma Limited, dated as of January 3, 2012.
- AAA. “Labetalol Product Divestiture Agreement” means the Termination of the License, Manufacturing and Supply Agreement in respect of that certain License, Manufacturing and Supply Agreement, dated as of January 3, 2012 (by and between Mylan Teoranta d/b/a Mylan Institutional and f/k/a Bioniche Teoranta (“Mylan Institutional”) and Gland Pharma Limited), by and between Mylan Institutional and Gland Pharma Limited, dated as of August 23, 2013, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Labetalol Product Divestiture Assets that have been approved by the Commission to accomplish the requirements of this Order. The Labetalol Product Divestiture Agreement and the related License, Manufacturing and Supply

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Agreement, dated as of January 3, 2012 are contained in Non-Public Appendix I.

- BBB. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.
- CCC. “Manufacturing Designee” means any Person other than a Respondent that has been designated by an Acquirer to manufacture a Divestiture Product for that Acquirer.
- DDD. “Meropenem Products” means the following: all Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Mylan pursuant to ANDA No. 204139, and any supplements, amendments, or revisions thereto.
- EEE. “Mesna Products” means the following: all Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Agila pursuant to ANDA No. 090913, and any supplements, amendments, or revisions thereto.
- FFF. “Methotrexate Products” means the following: all Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Mylan pursuant to the following ANDAs:
1. ANDA No. 040716;
 2. ANDA No. 040767;
 3. ANDA No. 040768; and,
 4. any supplements, amendments, or revisions thereto.
- GGG. “Mycophenolate Mofetil Products” means the following: all Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Mylan pursuant to ANDA No. 203575,

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and any supplements, amendments, or revisions thereto.

- HHH. “NDC Numbers” means the National Drug Code numbers, including both the labeler code assigned by the FDA and the additional numbers assigned by an Application holder as a product code for a specific Product.
- III. “Orders” means this Decision and Order and the related Order to Maintain Assets.
- JJJ. “Order Date” means the date on which the final Decision and Order in this matter is issued by the Commission.
- KKK. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- LLL. “Patent(s)” means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case filed, or in existence, on or before the Closing Date (except where this Order specifies a different time), and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.
- MMM. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.
- NNN. “Product(s)” means any pharmaceutical, biological, or genetic composition containing any formulation or dosage of a compound referenced as its

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pharmaceutically, biologically, or genetically active ingredient and/or that is the subject of an Application.

OOO. “Product Approval(s)” means any approvals, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests therefor, required by applicable Agencies related to the research, Development, manufacture, distribution, finishing, packaging, marketing, sale, storage or transport of a Product within the United States of America, and includes, without limitation, all approvals, registrations, licenses or authorizations granted in connection with any Application related to that Product.

PPP. “Product Assumed Contracts” means all of the following contracts or agreements (copies of each such contract to be provided to the Acquirer on or before the Closing Date and segregated in a manner that clearly identifies the purpose(s) of each such contract):

1. that make specific reference to the specified Divestiture Product and pursuant to which any Third Party is obligated to purchase, or has the option to purchase without further negotiation of terms, the specified Divestiture Product from the Respondent unless such contract applies generally to the Respondent’s sales of Products to that Third Party;
2. pursuant to which the Respondent purchases the active pharmaceutical ingredient(s) or other necessary ingredient(s) or component(s) or had planned to purchase the active pharmaceutical ingredient(s) or other necessary ingredient(s) or component(s) from any Third Party for use in connection with the manufacture of the specified Divestiture Product;

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3. relating to any Clinical Trials involving the specified Divestiture Product;
4. with universities or other research institutions for the use of the specified Divestiture Product in scientific research;
5. relating to the particularized marketing of the specified Divestiture Product or educational matters relating solely to the specified Divestiture Product(s);
6. pursuant to which a Third Party manufactures the specified Divestiture Product on behalf of the Respondent;
7. pursuant to which a Third Party provides any part of the manufacturing process including, without limitation, the finish, fill, and/or packaging of the specified Divestiture Product on behalf of Respondent;
8. pursuant to which a Third Party provides the Product Manufacturing Technology related to the specified Divestiture Product to the Respondent;
9. pursuant to which a Third Party is licensed by the Respondent to use the Product Manufacturing Technology;
10. constituting confidentiality agreements involving the specified Divestiture Product;
11. involving any royalty, licensing, covenant not to sue, or similar arrangement involving the specified Divestiture Product;
12. pursuant to which a Third Party provides any specialized services necessary to the research, Development, manufacture or distribution of the specified Divestiture Product to the Respondent

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including, but not limited to, consultation arrangements; and/or

13. pursuant to which any Third Party collaborates with the Respondent in the performance of research, Development, marketing, distribution or selling of the specified Divestiture Product or the Business related to such Divestiture Product;

provided, however, that where any such contract or agreement also relates to a Retained Product(s), the Respondent shall assign the Acquirer all such rights under the contract or agreement as are related to the specified Divestiture Product, but concurrently may retain similar rights for the purposes of the Retained Product(s).

QQQ. “Product Copyrights” means rights to all original works of authorship of any kind directly related to a Divestiture Product and any registrations and applications for registrations thereof within the Geographic Territory, including, but not limited to, the following: all such rights with respect to all promotional materials for healthcare providers, all promotional materials for patients, and educational materials for the sales force; copyrights in all preclinical, clinical and process development data and reports relating to the research and Development of that Product or of any materials used in the research, Development, manufacture, marketing or sale of that Product, including all copyrights in raw data relating to Clinical Trials of that Product, all case report forms relating thereto and all statistical programs developed (or modified in a manner material to the use or function thereof (other than through user references)) to analyze clinical data, all market research data, market intelligence reports and statistical programs (if any) used for marketing and sales research; all copyrights in customer information, promotional and marketing materials, that Product’s sales forecasting models, medical education materials, sales training

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materials, and advertising and display materials; all records relating to employees of a Respondent who accept employment with an Acquirer (excluding any personnel records the transfer of which is prohibited by applicable Law); all copyrights in records, including customer lists, sales force call activity reports, vendor lists, sales data, reimbursement data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all copyrights in data contained in laboratory notebooks relating to that Product or relating to its biology; all copyrights in adverse experience reports and files related thereto (including source documentation) and all copyrights in periodic adverse experience reports and all data contained in electronic databases relating to adverse experience reports and periodic adverse experience reports; all copyrights in analytical and quality control data; and all correspondence with the FDA or any other Agency.

RRR. “Product Development Reports” means:

1. Pharmacokinetic study reports related to the specified Divestiture Product;
2. Bioavailability study reports (including reference listed drug information) related to the specified Divestiture Product;
3. Bioequivalence study reports (including reference listed drug information) related to the specified Divestiture Product;
4. all correspondence, submissions, notifications, communications, registrations or other filings made to, received from or otherwise conducted with the FDA relating to the Application(s) related to the specified Divestiture Product;
5. annual and periodic reports related to the above-described Application(s), including any safety update reports;

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6. FDA approved Product labeling related to the specified Divestiture Product;
7. currently used or planned product package inserts (including historical change of controls summaries) related to the specified Divestiture Product;
8. FDA approved patient circulars and information related to the specified Divestiture Product;
9. adverse event reports, adverse experience information, descriptions of material events and matters concerning safety or lack of efficacy related to the specified Divestiture Product;
10. summary of Product complaints from physicians related to the specified Divestiture Product;
11. summary of Product complaints from customers related to the specified Divestiture Product;
12. Product recall reports filed with the FDA related to the specified Divestiture Product, and all reports, studies and other documents related to such recalls;
13. investigation reports and other documents related to any out of specification results for any impurities found in the specified Divestiture Product;
14. reports related to the specified Divestiture Product from any consultant or outside contractor engaged to investigate or perform testing for the purposes of resolving any product or process issues, including without limitation, identification and sources of impurities;
15. reports of vendors of the active pharmaceutical ingredients, excipients, packaging components and detergents used to produce the specified

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Divestiture Product that relate to the specifications, degradation, chemical interactions, testing and historical trends of the production of the specified Divestiture Product;

16. analytical methods development records related to the specified Divestiture Product;
17. manufacturing batch records related to the specified Divestiture Product;
18. stability testing records related to the specified Divestiture Product;
19. change in control history related to the specified Divestiture Product; and
20. executed validation and qualification protocols and reports related to the specified Divestiture Product.

SSS. “Product Employee Information” means the following, for each Divestiture Product Core Employee, as and to the extent permitted by Law:

1. a complete and accurate list containing the name of each Divestiture Product Core Employee (including former employees who were employed by the specified Respondent within ninety (90) days of the execution date of any Remedial Agreement);
2. with respect to each such employee, the following information:
 - a. the date of hire and effective service date;
 - b. job title or position held;
 - c. a specific description of the employee’s responsibilities related to the relevant Divestiture Product; provided, however, in lieu of this description, the specified Respondent

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may provide the employee's most recent performance appraisal;

- d. the base salary or current wages;
 - e. the most recent bonus paid, aggregate annual compensation for the relevant Respondent's last fiscal year and current target or guaranteed bonus, if any;
 - f. employment status (i.e., active or on leave or disability; full-time or part-time);
 - g. and any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees;
3. at the Acquirer's option or the Proposed Acquirer's option (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.

TTT. "Product Intellectual Property" means all of the following related to a Divestiture Product (other than Product Licensed Intellectual Property):

1. Patents;
2. Product Copyrights;
3. Product Trademarks, Product Trade Dress, trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development and other information; and
4. rights to obtain and file for patents, trademarks, and copyrights and registrations thereof and to bring suit against a Third Party for the past, present

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or future infringement, misappropriation, dilution, misuse or other violations of any of the foregoing;

provided, however, “Product Intellectual Property” does not include the corporate names or corporate trade dress of “Mylan”, “Agila”, “Strides” or the related corporate logos thereof, or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by the Respondent or the related corporate logos thereof, or general registered images or symbols by which Mylan, Agila or Strides can be identified or defined.

UUU. “Product Licensed Intellectual Property” means the following:

1. Patents that are related to a Divestiture Product that the Respondent can demonstrate have been routinely used, prior to the Acquisition Date, for Retained Product(s) that has been marketed or sold on an extensive basis by the Respondent within the two-year period immediately preceding the Acquisition;
2. trade secrets, know how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development, and other information, and all rights in the Geographic Territory to limit the use or disclosure thereof, that are related to a Divestiture Product and that the Respondent can demonstrate have been routinely used, prior to the Acquisition Date, for Retained Product(s) that has been marketed or sold on an extensive basis by the Respondent within the two-year period immediately preceding the Acquisition; and
3. all Right(s) of Reference or Use that is either owned or controlled by, or has been granted or licensed to the Respondent that is related to the Drug Master File of an NDA of a Product that is

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the therapeutic equivalent (as that term is defined by the FDA) of the specified Divestiture Product.

VVV. “Product Manufacturing Employees” means all salaried employees of a Respondent who have directly participated in the planning, design, implementation or operational management of the Product Manufacturing Technology of the specified Divestiture Product (irrespective of the portion of working time involved unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) within the eighteen (18) month period immediately prior to the Closing Date.

WWW. “Product Manufacturing Technology” means all of the following related to a Divestiture Product:

1. all technology, trade secrets, know-how, formulas, and proprietary information (whether patented, patentable or otherwise) related to the manufacture of that Product, including, but not limited to, the following: all product specifications, processes, analytical methods, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with the FDA Application(s) conformance and cGMP compliance, and labeling and all other information related to the manufacturing process, and supplier lists;
2. all ingredients, materials, or components used in the manufacture of any that Product including the active pharmaceutical ingredient, excipients or packaging materials; and,

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3. for those instances in which the manufacturing equipment is not readily available from a Third Party, at the Acquirer's option, all such equipment used to manufacture that Product.

XXX. "Product Marketing Materials" means all marketing materials used specifically in the marketing or sale of the specified Divestiture Product in the Geographic Territory as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, mailing lists, sales materials (e.g., detailing reports, vendor lists, sales data), marketing information (e.g., competitor information, research data, market intelligence reports, statistical programs (if any) used for marketing and sales research), customer information (including customer net purchase information to be provided on the basis of either dollars and/or units for each month, quarter or year), sales forecasting models, educational materials, and advertising and display materials, speaker lists, promotional and marketing materials, Website content and advertising and display materials, artwork for the production of packaging components, television masters and other similar materials related to the specified Divestiture Product.

YYY. "Product Research and Development Employees" means all salaried employees of a Respondent who have directly participated in the research, Development, regulatory approval process, or clinical studies of the specified Divestiture Product (irrespective of the portion of working time involved, unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) with the eighteen (18) month period immediately prior to the Closing Date.

ZZZ. "Product Scientific and Regulatory Material" means all technological, scientific, chemical, biological, pharmacological, toxicological, regulatory and Clinical Trial materials and information.

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AAAA. “Product Trade Dress” means the current trade dress of a Product, including but not limited to, Product packaging, and the lettering of the Product trade name or brand name.

BBBB. “Product Trademark(s)” means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for a Product.

CCCC. “Proposed Acquirer” means a Person proposed by a Respondent (or a Divestiture Trustee) to the Commission and submitted for the approval of the Commission as the acquirer for particular assets or rights required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to this Order.

DDDD. “Remedial Agreement(s)” means the following:

1. any agreement between a Respondent(s) and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including without limitation, any agreement to supply specified products or components thereof, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission’s determination to make this Order final and effective;
2. any agreement between a Respondent(s) and a Third Party to effect the assignment of assets or

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rights of that Respondent(s) related to a Divestiture Product to the benefit of an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final and effective;

3. any agreement between a Respondent(s) and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including without limitation, any agreement by that Respondent(s) to supply specified products or components thereof, and that has been approved by the Commission to accomplish the requirements of this Order; and/or
4. any agreement between a Respondent(s) and a Third Party to effect the assignment of assets or rights of that Respondent(s) related to a Divestiture Product to the benefit of an Acquirer that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto.

EEEE. "Retained Product" means any Product(s) other than a Divestiture Product.

FFFF. "Right of Reference or Use" means the authority to rely upon, and otherwise use, an investigation for the purpose of obtaining approval of an Application or to defend an Application, including the ability to make

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available the underlying raw data from the investigation for FDA audit.

GGGG. “Sagent” means Sagent Pharmaceuticals, Inc. a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its headquarters address located at 1901 N. Roselle Road, Suite 700, Schaumburg, Illinois 60195.

HHHH. “Supply Cost” means a cost not to exceed the Respondent’s (as that Respondent is identified in the definition of the respective Divestiture Product) average direct per unit cost in United States dollars of manufacturing the specified Divestiture Product for the twelve (12) month period immediately preceding the Acquisition Date. “Supply Cost” shall expressly exclude any intracompany business transfer profit; provided, however, that in each instance where: (i) an agreement to Contract Manufacture is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for a Divestiture Product, “Supply Cost” means the cost as specified in such Remedial Agreement for that Divestiture Product.

IIII. “Technology Transfer Standards” means requirements and standards sufficient to ensure that the information and assets required to be delivered to an Acquirer pursuant to this Order are delivered in an organized, comprehensive, complete, useful, timely (i.e., ensuring no unreasonable delays in transmission), and meaningful manner. Such standards and requirements shall include, inter alia,

1. designating employees of the Respondent(s) knowledgeable about the Product Manufacturing Technology (and all related intellectual property) related to each of the Divestiture Products who will be responsible for communicating directly with the Acquirer or its Manufacturing Designee, and the

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Interim Monitor (if one has been appointed), for the purpose of effecting such delivery;

2. preparing technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to the specified Divestiture Product that are acceptable to the Acquirer;
3. preparing and implementing a detailed technological transfer plan that contains, inter alia, the transfer of all relevant information, all appropriate documentation, all other materials, and projected time lines for the delivery of all such Product Manufacturing Technology (including all related intellectual property) to the Acquirer or its Manufacturing Designee; and
4. providing, in a timely manner, assistance and advice to enable the Acquirer or its Manufacturing Designee to:
 - a. manufacture the specified Divestiture Product in the quality and quantities achieved by the specified Respondent (as that Respondent is identified in the definition of the specified Divestiture Product), or the manufacturer and/or developer of such Divestiture Product;
 - b. obtain any Product Approvals necessary for the Acquirer or its Manufacturing Designee, to manufacture, distribute, market, and sell the specified Divestiture Product in commercial quantities and to meet all Agency-approved specifications for such Divestiture Product; and
 - c. receive, integrate, and use all such Product Manufacturing Technology and all such intellectual property related to the specified Divestiture Product.

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JJJJ. “Third Party(ies)” means any non-governmental Person other than the following: the Respondents; or, the Acquirer of particular assets or rights pursuant to this Order.

KKKK. “Website” means the content of the Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by a Respondent; provided, however, “Website” shall not include the following: (1) content owned by Third Parties and other Product Intellectual Property not owned by a Respondent that are incorporated in such Website(s), such as stock photographs used in the Website(s), except to the extent that a Respondent can convey its rights, if any, therein; or (2) content unrelated to any of the Divestiture Products.

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

A. Not later than the earlier of: (i) ten (10) days after the Acquisition Date or (ii) ten (10) days after the Order Date, Respondent Mylan shall divest the Group A Divestiture Product Assets and grant the related Divestiture Product License, absolutely and in good faith, to Intas pursuant to, and in accordance with, the Group A Divestiture Product Agreement(s) (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Intas or to reduce any obligations of Respondent Mylan under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Group A Divestiture Product Assets is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondent Mylan has divested the Group A Divestiture Product Assets to Intas prior to the Order Date, and if, at the time the

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Commission determines to make this Order final and effective, the Commission notifies Respondent Mylan that Intas is not an acceptable purchaser of the Group A Divestiture Product Assets, then Respondent Mylan shall immediately rescind the transaction with Intas, in whole or in part, as directed by the Commission, and shall divest the Group A Divestiture Product Assets within one hundred eighty (180) days from the Order Date, 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;

provided further that if Respondent Mylan has divested the Group A Divestiture Product Assets to Intas prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent Mylan that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent Mylan, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Group A Divestiture Product Assets to Intas (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

- B. Not later than the earlier of: (i) ten (10) days after the Acquisition Date or (ii) ten (10) days after the Order Date, Respondent Mylan shall divest the Group B Divestiture Product Assets and grant the related Divestiture Product License, absolutely and in good faith, to JHP pursuant to, and in accordance with, the Group B Divestiture Product Agreement(s) (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of JHP or to reduce any obligations of Respondent Mylan under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Group

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B Divestiture Product Assets is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondent Mylan has divested the Group B Divestiture Product Assets and granted the related Divestiture Product License to JHP prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent Mylan that JHP is not an acceptable purchaser of the Group B Divestiture Product Assets, then Respondent Mylan shall immediately rescind the transaction with JHP, in whole or in part, as directed by the Commission, and shall divest the Group B Divestiture Product Assets and grant the related Divestiture Product License within one hundred eighty (180) days from the Order Date, 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;

provided further that if Respondent Mylan has divested the Group B Divestiture Product Assets to JHP prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent Mylan that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent Mylan, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Group B Divestiture Product Assets to JHP (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

- C. Not later than the earlier of: (i) ten (10) days after the Acquisition Date or (ii) ten (10) days after the Order Date, Respondent Mylan shall divest the Group C Divestiture Product Assets and grant the related Divestiture Product License, absolutely and in good

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faith, to Sagent pursuant to, and in accordance with, the Group C Divestiture Product Agreement(s) (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Sagent or to reduce any obligations of Respondent Mylan under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Group C Divestiture Product Assets is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondent Mylan has divested the Group C Divestiture Product Assets and granted the related Divestiture Product License to Sagent prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent Mylan that Sagent is not an acceptable purchaser of the Group C Divestiture Product Assets, then Respondent Mylan shall immediately rescind the transaction with Sagent, in whole or in part, as directed by the Commission, and shall divest the Group C Divestiture Product Assets and grant the related Divestiture Product License within one hundred eighty (180) days from the Order Date, 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;

provided further that if Respondent Mylan has divested the Group C Divestiture Product Assets and granted the related Divestiture Product License to Sagent prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent Mylan that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent Mylan, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Group C Divestiture Product Assets or grant of the related Divestiture Product License, as

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applicable, to Sagent (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

- D. Not later than the earlier of: (i) ten (10) days after the Acquisition Date or (ii) ten (10) days after the Order Date, Respondent Mylan shall divest the Labetalol Product Assets (to the extent that such assets are not already owned, controlled or in the possession of Gland), absolutely and in good faith, to Gland pursuant to, and in accordance with, the Labetalol Product Divestiture Agreements (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Gland or to reduce any obligations of Respondent Mylan under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Labetalol Product Assets is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondent Mylan has divested the Labetalol Divestiture Product Assets to Gland prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent Mylan that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent Mylan, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Labetalol Divestiture Product Assets to Gland (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

- E. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary to permit Respondents to divest the assets

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required to be divested pursuant to this Order to an Acquirer, and to permit the relevant Acquirer to continue the Business of the Divestiture Product(s) being acquired by that Acquirer;

provided, however, Respondents may satisfy this requirement by certifying that the relevant Acquirer for the Divestiture Product has executed all such agreements directly with each of the relevant Third Parties.

F. Respondents shall:

1. submit to each Acquirer, at Respondents' expense, all Confidential Business Information related to the Divestiture Products being acquired by that Acquirer;
2. deliver all Confidential Business Information related to the Divestiture Products being acquired by that Acquirer to that Acquirer:
 - a. in good faith;
 - b. in a timely manner, i.e., as soon as practicable, avoiding any delays in transmission of the respective information; and
 - c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
3. pending complete delivery of all such Confidential Business Information to the relevant Acquirer, provide that Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the relevant Divestiture Products that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;

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4. not use, directly or indirectly, any such Confidential Business Information related to the Business of the Divestiture Products other than as necessary to comply with the following:
 - a. the requirements of this Order;
 - b. Respondents' obligations to each respective Acquirer under the terms of any related Remedial Agreement; or
 - c. applicable Law;
 5. not disclose or convey any Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer of the particular Divestiture Products, (ii) other Persons specifically authorized by that Acquirer to receive such information, (iii) the Commission, or (iv) the Interim Monitor (if any has been appointed); and
 6. not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information related to the marketing or sales of the Divestiture Products to the employees associated with the Business related to those Retained Products that are the therapeutic equivalent (as that term is defined by the FDA) of the Divestiture Products.
- G. For each Acquirer of a Divestiture Product that is a Contract Manufacture Product, Respondents shall provide, or cause to be provided to that Acquirer in a manner consistent with the Technology Transfer Standards the following:
1. all Product Manufacturing Technology (including all related intellectual property) related to the Divestiture Product(s) being acquired by that Acquirer; and

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2. all rights to all Product Manufacturing Technology (including all related intellectual property) that is owned by a Third Party and licensed to any Respondent related to the Divestiture Products being acquired by that Acquirer.

Respondent Mylan shall obtain any consents from Third Parties required to comply with this provision. No Respondent shall enforce any agreement against a Third Party or an Acquirer to the extent that such agreement may limit or otherwise impair the ability of that Acquirer to use or to acquire from the Third Party the Product Manufacturing Technology (including all related intellectual property) related to the Divestiture Products acquired by that Acquirer. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Product Manufacturing Technology. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each Third Party that is subject to such agreements that allows the Third Party to provide the relevant Product Manufacturing Technology to that Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to that Acquirer.

- H. For each Acquirer of a Divestiture Product that is a Contract Manufacture Product, Respondent Mylan shall:

1. upon reasonable written notice and request from that Acquirer to Respondent Mylan, Contract Manufacture and deliver, or cause to be manufactured and delivered, to the requesting Acquirer, in a timely manner and under reasonable terms and conditions, a supply of each of the Contract Manufacture Products related to the Divestiture Products acquired by that Acquirer at Supply Cost, for a period of time sufficient to allow that Acquirer (or the Manufacturing Designee of the Acquirer) to obtain all of the

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relevant Product Approvals necessary to manufacture in commercial quantities, and in a manner consistent with cGMP, the finished drug product independently of Respondent Mylan, and to secure sources of supply of the active pharmaceutical ingredients, excipients, other ingredients, and necessary components listed in Application(s) of the relevant Respondent (as that Respondent is identified in the definition of the respective Divestiture Product) for the Divestiture Product(s) acquired by that Acquirer from Persons other than Respondents Mylan or Agila;

2. make representations and warranties to such Acquirer that the Contract Manufacture Product(s) supplied by a Respondent pursuant to a Remedial Agreement meet the relevant Agency-approved specifications. For the Contract Manufacture Product(s) to be marketed or sold in the Geographic Territory, the supplying Respondent 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 Contract Manufacture Product(s) supplied to the Acquirer pursuant to a Remedial Agreement by that Respondent to meet cGMP. This obligation may be made contingent upon the Acquirer giving that Respondent prompt written notice of such claim and cooperating fully in the defense of such claim;

provided, however, that a Respondent 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 that Respondent's responsibilities to supply the Contract Manufacture Products in the manner required by this Order; *provided further, however*, that this obligation shall not require Respondents to be liable for any negligent act or omission of the Acquirer or for any representations and warranties,

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express or implied, made by the Acquirer that exceed the representations and warranties made by a Respondent to the Acquirer in an agreement to Contract Manufacture;

provided further, however, that in each instance where: (i) an agreement to divest relevant assets or Contract Manufacture is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for a Divestiture Product, each such agreement may contain limits on a Respondent's aggregate liability resulting from the failure of the Contract Manufacture Products supplied to the Acquirer pursuant to such Remedial Agreement to meet cGMP;

3. give priority to supplying a Contract Manufacture Product to the relevant Acquirer over manufacturing and supplying of Products for Respondents' own use or sale;
4. make representations and warranties to each Acquirer that Respondents shall hold harmless and indemnify the Acquirer for any liabilities or loss of profits resulting from the failure of the Contract Manufacture Products to be delivered in a timely manner as required by the Remedial Agreement(s) unless 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;

provided, however, that in each instance where: (i) an agreement to divest relevant assets or Contract Manufacture is specifically referenced and attached to this Order and (ii) such agreement becomes a Remedial Agreement for a Divestiture Product, each such agreement may contain limits on a Respondent's aggregate liability for such a failure;

5. during the term of any agreement to Contract Manufacture, upon written request of that Acquirer

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or the Interim Monitor (if any has been appointed), make available to the Acquirer and the Interim Monitor (if any has been appointed) all records that relate to the manufacture of the relevant Contract Manufacture Products that are generated or created after the Closing Date;

6. during the term of any agreement to Contract, Respondent Mylan shall take all actions as are reasonably necessary to ensure an uninterrupted supply of the Contract Manufacture Product(s);
7. in the event Respondent Mylan becomes unable to supply or produce a Contract Manufacture Product from the facility or facilities originally contemplated under a Remedial Agreement with an Acquirer, then Respondent Mylan shall provide a therapeutically equivalent (as that term is defined by the FDA) Product from another of Respondent Mylan's facility or facilities in those instances where such facilities are being used or have previously been used, and are able to be used, by Respondents to manufacture such Product(s);
8. provide access to all information and facilities, and make such arrangements with Third Parties, as are necessary to allow the Interim Monitor to monitor compliance with the obligations to Contract Manufacture;
9. during the term of any agreement to Contract Manufacture, provide consultation with knowledgeable employees of the Respondents and training, at the written request of the Acquirer and at a facility chosen by the Acquirer, for the purposes of enabling that Acquirer (or the Manufacturing Designee of that Acquirer) to obtain all Product Approvals to manufacture the Contract Manufacture Products acquired by that Acquirer in the same quality achieved by, or on behalf of, the relevant Respondent (as that

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Respondent is identified in the definition of the respective Divestiture Product) and in commercial quantities, and in a manner consistent with cGMP, independently of Respondent Mylan and sufficient to satisfy management of the Acquirer that its personnel (or the Manufacturing Designee's personnel) are adequately trained in the manufacture of the Contract Manufacture Products;

The foregoing provisions, II.H.1. - 9., shall remain in effect with respect to each Contract Manufacture Product until the earliest of: (i) the date the Acquirer of that Contract Manufacture Product (or the Manufacturing Designee(s) of that Acquirer), respectively, is approved by the FDA to manufacture and sell such Contract Manufacture Product in the United States and able to manufacture such Contract Manufacture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondent Mylan; (ii) the date the Acquirer of a particular Contract Manufacture Product notifies the Commission and Respondent Mylan of its intention to abandon its efforts to manufacture such Contract Manufacture Product; (iii) the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the Acquirer of a particular Contract Manufacture Product has abandoned its efforts to manufacture such Contract Manufacture Product, or (iv) the date five (v) years from the Closing Date.

- I. Respondent Mylan shall require, as a condition of continued employment post-divestiture of the assets required to be divested pursuant to this Order, that each employee that has had responsibilities related to the marketing or sales of the Divestiture Products within the one (1) year period prior to the Closing Date and each employee that has responsibilities related to the marketing or sales of those Retained Products that are the therapeutic equivalent (as that term is defined by the FDA) of the Divestiture Products, in each case

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who have or may have had access to Confidential Business Information, and the direct supervisor(s) of any such employee sign a confidentiality agreement pursuant to which that employee shall be required to maintain all Confidential Business Information related to the Divestiture Products as strictly confidential, including the nondisclosure of that information to all other employees, executives or other personnel of Respondent Mylan (other than as necessary to comply with the requirements of this Order).

- J. Not later than thirty (30) days after the Closing Date, Respondent Mylan shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Divestiture Products by Respondent Mylan's personnel to all of their employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information. Respondent Mylan shall give the above-described notification by e mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Closing Date. Respondent Mylan shall provide a copy of the notification to the relevant Acquirer. Respondent Mylan shall maintain complete records of all such notifications at Respondent Mylan's registered office within the United States and shall provide an officer's certification to the Commission stating that the acknowledgment program has been implemented and is being complied with. Respondent Mylan shall provide the relevant Acquirer with copies of all certifications, notifications and reminders sent to Respondent Mylan's personnel.
- K. For each Acquirer of a Divestiture Product that is a Contract Manufacture Product, Respondent Mylan shall:
 - 1. for a period of six (6) months from the Closing Date or until the hiring of twenty (20) Divestiture

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Product Core Employees by that Acquirer or its Manufacturing Designee, whichever occurs earlier, provide that Acquirer with the opportunity to enter into employment contracts with the Divestiture Product Core Employees related to the Divestiture Products and assets acquired by that Acquirer. Each of these periods is hereinafter referred to as the “Divestiture Product Core Employee Access Period(s);”

2. not later than the earlier of the following dates: (i) ten (10) days after notice by staff of the Commission to Respondent Mylan to provide the Product Employee Information; or (ii) ten (10) days after written request by that Acquirer, provide that Acquirer or Proposed Acquirer(s) with the Product Employee Information related to the Divestiture Product Core Employees. Failure by Respondent Mylan to provide the Product Employee Information for any Divestiture Product Core Employee within the time provided herein shall extend the Divestiture Product Core Employee Access Period(s) with respect to that employee in an amount equal to the delay;
3. during the Divestiture Product Core Employee Access Period(s), not interfere with the hiring or employing by that Acquirer or its Manufacturing Designee of the Divestiture Product Core Employees, and remove any impediments within the control of Respondent Mylan that may deter these employees from accepting employment with that Acquirer or its Manufacturing Designee, including, but not limited to, any noncompete or nondisclosure provision of employment with respect to a Divestiture Product or other contracts with Respondents Mylan or Agila that would affect the ability or incentive of those individuals to be employed by that Acquirer or its Manufacturing Designee. In addition, Respondents Mylan or Agila shall not make any counteroffer to such a Divestiture Product Core Employee who has

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received a written offer of employment from that Acquirer or its Manufacturing Designee;

provided, however, that, subject to the conditions of continued employment prescribed in this Order, this Paragraph shall not prohibit Respondents from continuing to employ any Divestiture Product Core Employee under the terms of that employee's employment with Respondents prior to the date of the written offer of employment from the Acquirer or its Manufacturing Designee to that employee;

4. until the Closing Date, provide all Divestiture Product Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, and manufacture the Divestiture Product consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Divestiture Product and to ensure successful execution of the pre-Acquisition plans for that Divestiture Product. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents until the Closing Date(s) for the divestiture of the assets related to the Divestiture Product has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law);

provided, however, that this Paragraph does not require nor shall be construed to require Respondents to terminate the employment of any employee or to prevent Respondents from continuing to employ the Divestiture Product Core Employees in connection with the Acquisition; and

5. for a period of one (1) year from the Closing Date, not, directly or indirectly, solicit or otherwise attempt to induce any employee of the Acquirer or its Manufacturing Designee with any amount of responsibility related to a Divestiture Product

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("Divestiture Product Employee") to terminate his or her employment relationship with the Acquirer or its Manufacturing Designee; or hire any Divestiture Product Employee;

provided, however, Respondents may hire any former Divestiture Product Employee whose employment has been terminated by the Acquirer or its Manufacturing Designee or who independently applies for employment with a Respondent, as long as that employee was not solicited in violation of the nonsolicitation requirements contained herein;

provided further, however, that any Respondent may do the following: (i) advertise for employees in newspapers, trade publications or other media not targeted specifically at the Divestiture Product Employees; or (ii) hire a Divestiture Product Employee who contacts any Respondent on his or her own initiative without any direct or indirect solicitation or encouragement from any Respondent.

L. Until Respondents complete the divestitures required by this Order and fully provide, or cause to be provided, the Product Manufacturing Technology related to a particular Divestiture Product to the relevant Acquirer,

1. Respondents shall take actions as are necessary to:

- a. maintain the full economic viability and marketability of the Businesses associated with that Divestiture Product;
- b. minimize any risk of loss of competitive potential for that Business;
- c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to that Divestiture Product;

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- d. ensure the assets related to each Divestiture Product are provided to the relevant Acquirer in a manner without disruption, delay, or impairment of the regulatory approval processes related to the Business associated with each Divestiture Product;
 - e. ensure the completeness of the transfer and delivery of the Product Manufacturing Technology; and
2. Respondents shall not sell, transfer, encumber or otherwise impair the assets required to be divested (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Businesses associated with that Divestiture Product.
- M. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against an Acquirer or the Divestiture Product Releasee(s) of that Acquirer under the following:
1. any Patent owned by or licensed to a Respondent as of the day after the Acquisition Date that claims a method of making, using, or administering, or a composition of matter of a Product, or that claims a device relating to the use thereof;
 2. any Patent that was filed or in existence on or before the Acquisition Date that is acquired by or licensed to a Respondent at any time after the Acquisition Date that claims a method of making, using, or administering, or a composition of matter of a Product, or that claims a device relating to the use thereof;
- if such suit would have the potential directly to limit or interfere with that Acquirer's freedom to practice the

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following: (i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of marketing, sale or offer for sale within the United States of America of such Divestiture Product(s); or (ii) the use within, import into, export from, or the supply, distribution, or sale within, the United States of America of the Divestiture Product(s) acquired by that Acquirer. Each Respondent shall also covenant to that Acquirer that as a condition of any assignment or license from that Respondent to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue that Acquirer or the related Divestiture Product Releasee(s) under such Patents, if the suit would have the potential directly to limit or interfere with that Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of marketing, sale or offer for sale within the United States of America of such Divestiture Product(s); or (ii) the use within, import into, export from, or the supply, distribution, or sale or offer for sale within, the United States of America of the Divestiture Product(s) acquired by that Acquirer. The provisions of this Paragraph do not apply to any Patent owned by, acquired by or licensed to or from a Respondent that claims inventions conceived by and reduced to practice after the Acquisition Date.

- N. Upon reasonable written notice and request from an Acquirer to Respondent Mylan, Respondent Mylan shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondent Mylan to assist that Acquirer to defend against, respond to, or otherwise participate in any litigation brought by a Third Party related to the Product Intellectual Property related to any of the Divestiture Product(s) acquired by that Acquirer, if such litigation would have the potential to interfere with that Acquirer's freedom to practice the following:

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(i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of marketing, sale or offer for sale within the United States of America of such Divestiture Product(s); or
(ii) the use within, import into, export from, or the supply, distribution, or sale within, the United States of America of the Divestiture Product(s) acquired by that Acquirer.

O. For any patent infringement suit filed prior to the Closing Date in which any Respondent is alleged to have infringed a Patent of a Third Party or any potential patent infringement suit from a Third Party that any Respondent has prepared or is preparing to defend against as of the Closing Date, and where such a suit would have the potential directly to limit or interfere with the relevant Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of marketing, sale or offer for sale within the United States of America of such Divestiture Products; or (ii) the use within, import into, export from, or the supply, distribution, or sale or offer for sale within, the United States of America of such Divestiture Product(s), that Respondent shall:

1. cooperate with that Acquirer and provide any and all necessary technical and legal assistance, documentation and witnesses from that Respondent in connection with obtaining resolution of any pending patent litigation related to that Divestiture Product;
2. waive conflicts of interest, if any, to allow that Respondent's outside legal counsel to represent that Acquirer in any ongoing patent litigation related to that Divestiture Product; and

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3. permit the transfer to that Acquirer of all of the litigation files and any related attorney work-product in the possession of that Respondent's outside counsel related to that Divestiture Product.
- P. The purpose of the divestiture of the Divestiture Product Assets and the provision of the related Product Manufacturing Technology and the related obligations imposed on the Respondents by this Order is:
1. to ensure the continued use of such assets for the purposes of the Business associated with each Divestiture Product within the Geographic Territory; and
 2. to create a viable and effective competitor that is independent of Respondent Mylan in the Business of each Divestiture Product within the Geographic Territory; and,
 3. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

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

- A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondent Mylan has not opposed, in writing, including the reasons for opposing, the selection of a proposed

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Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent Mylan of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.

- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent Mylan shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.
- D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
 - 1. The Interim Monitor shall have the power and authority to monitor Respondent's compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.
 - 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 - 3. The Interim Monitor shall serve until the date of completion by the Respondents of the divestiture of all Divestiture Product Assets and the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of this Order and, with respect to each Divestiture Product that is a Contract Manufacture Product, until the earliest of:

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- a. the date the Acquirer of that Divestiture Product (or that Acquirer's Manufacturing Designee(s)) is approved by the FDA to manufacture and sell that Divestiture Product and able to manufacture the Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondent Mylan;
- b. the date the Acquirer of that Divestiture Product notifies the Commission and Respondent Mylan of its intention to abandon its efforts to manufacture that Divestiture Product; or
- c. the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the Acquirer has abandoned its efforts to manufacture that Divestiture Product;

provided, however, that, the Interim Monitor's service shall not exceed five (5) years from the Order Date;

provided, further, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and

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shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.

- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent Mylan, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent Mylan, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
- H. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by each Acquirer with respect to the performance of Respondents' obligations under the Order or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Order. provided, however, beginning ninety (90) days after Respondents

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have filed their final report pursuant to Paragraph VII.B., and ninety (90) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by each Acquirer toward obtaining FDA approval to manufacture each Divestiture Product and obtaining the ability to manufacture each Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondents.

- I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; provided, however, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- M. The Interim Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

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

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey the Divestiture Product Assets as required by this 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 this 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 Paragraph 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 Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Mylan, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent Mylan has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent Mylan of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have

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consented to the selection of the proposed Divestiture Trustee.

- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent 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 this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent 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 this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.
 - 2. The Divestiture Trustee shall have one (1) 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 (1) year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestiture 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 two (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,

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divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent 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 Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this 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 Respondent from among those approved by the Commission; provided further, however, that Respondent shall select such Person within five (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,

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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 this Order.

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; provided, however, that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of this Order or the Order to Maintain Assets in this matter.

Decision and Order

8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) 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 sign an appropriate confidentiality agreement 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 Paragraph.
- 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 required by this Order.

V.

IT IS FURTHER ORDERED that, in addition to any other requirements and prohibitions relating to Confidential Business Information in this Order, each Respondent shall assure that its own counsel (including its own in-house counsel under

Decision and Order

appropriate confidentiality arrangements) shall not retain unredacted copies of documents or other materials provided to an Acquirer or access original documents provided to an Acquirer, except under circumstances where copies of documents are insufficient or otherwise unavailable, and for the following purposes:

- A. To assure such Respondent's compliance with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or
- B. To defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the Divestiture Products or the assets and Businesses associated with those Divestiture Products;

provided, however, that a Respondent may disclose such information as necessary for the purposes set forth in this Paragraph V pursuant to an appropriate confidentiality order, agreement or arrangement;

provided further, however, that pursuant to this Paragraph V, the Respondent needing such access to original documents shall: (i) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the relevant Acquirer (but shall not be deemed to have violated this requirement if that Acquirer withholds such agreement unreasonably); and (ii) use best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

VI.

IT IS FURTHER ORDERED that:

Decision and Order

- A. Any Remedial Agreement shall be deemed incorporated into this Order.
- B. Any failure by a Respondent to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.
- C. Respondents shall include in each Remedial Agreement related to each of the Divestiture Products a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of each Respondent's obligation to the Acquirer pursuant to this Order.
- D. For each Divestiture Product that is a Contract Manufacture Product, Respondents shall include in the Remedial Agreement(s) related to that Divestiture Product a representation from the Acquirer that the Acquirer shall use commercially reasonable efforts to secure the FDA approval(s) necessary to manufacture, or to have manufactured by a Third Party, in commercial quantities, each such Divestiture Product, as applicable, and to have any such manufacture to be independent of the Respondents, all as soon as reasonably practicable.
- E. No Respondent shall seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to any of the Divestiture Products a decision the result of which would be inconsistent with the terms of this Order or the remedial purposes thereof.
- F. No Respondent shall modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5). Notwithstanding any term of the Remedial Agreement(s), any modification or amendment of any

Decision and Order

Remedial Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

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

- A. Within five (5) days of the Acquisition, Respondent Mylan shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Within thirty (30) days after the Order Date, and every sixty (60) days thereafter until Respondent Mylan has fully complied with Paragraphs II.A , II.B., II.C., II.D., II.E., II.F.1. - II.F.3, II.G., II.H., II.I., II.J., II.K., and II.L., Respondent Mylan shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent Mylan shall submit at the same time a copy of its report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondent Mylan shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant paragraphs of the Order, including:
 - 1. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and rights, (ii) transitional services being provided by the Respondents to the relevant Acquirer, and (iii) the agreement(s) to Contract Manufacture; and
 - 2. a detailed description of the timing for the completion of such obligations.
- C. One (1) year after the Order Date, annually for the next nine years on the anniversary of the Order Date, and at

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other times as the Commission may require, Respondent Mylan shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

VIII.

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

- A. any proposed dissolution of a Respondent;
- B. any proposed acquisition, merger or consolidation of a Respondent; or
- C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

IX.

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

- A. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized

Decision and Order

representative(s) of the Commission and at the expense of the Respondent; and

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

X.

IT IS FURTHER ORDERED that this Order shall terminate on December 12, 2023.

By the Commission.

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER
TO AID PUBLIC COMMENT****Introduction**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Mylan Inc. (“Mylan”), Agila Specialties Global Pte. Limited and Agila Specialties Private Limited (collectively, “Agila”), and Strides Arcolab Limited (“Strides”) that is designed to remedy the anticompetitive effects that otherwise would have resulted in eleven generic injectable pharmaceutical markets from Mylan’s proposed acquisition of Agila. Under the terms of the proposed Consent Agreement, Mylan is required to divest either Mylan or Agila/Strides products as follows: (1) to Intas Pharmaceuticals Ltd. (“Intas”), Mylan’s fluorouracil injection and methotrexate sodium preservative-free injection; (2) to JHP Pharmaceuticals, LLC (“JHP”), Mylan’s etomidate injection, ganciclovir injection, meropenem injection, and mycophenolate mofetil injection and Agila/Strides’ amiodarone hydrochloride injection and fomepizole injection; and (3) to Sagent Pharmaceuticals, Inc. (“Sagent”), Agila/Strides’ acetylcysteine injection and mesna injection. In addition, Mylan is required to release all of its rights relating to labetalol hydrochloride injection to Gland Pharma Ltd. (“Gland”).

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again evaluate the proposed Consent Agreement, along with the comments received, in order to make a final decision as to whether it should withdraw from the proposed Consent Agreement, or make final the Decision and Order (“Order”).

Mylan proposes to acquire Agila for approximately \$1.85 billion pursuant to a Sale and Purchase Agreement dated February 27, 2013 (“Proposed Acquisition”). The Commission alleges in its Complaint that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15

Analysis to Aid Public Comment

U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening current and future competition in eleven generic injectable pharmaceutical product markets in the United States. The eleven product markets are: (1) amiodarone hydrochloride injection; (2) etomidate injection; (3) fluorouracil injection; (4) labetalol hydrochloride injection; (5) mesna injection; (6) methotrexate sodium preservative-free injection; (7) acetylcysteine injection; (8) fomepizole injection; (9) ganciclovir injection; (10) meropenem injection; and (11) mycophenolate mofetil injection. The proposed Consent Agreement will remedy the alleged violations by replacing the competition that would otherwise be eliminated by the Proposed Acquisition.

The Relevant Products and Structure of the Markets

Mylan's proposed purchase of Agila will lessen current and future competition in each of the eleven generic injectable pharmaceutical product markets, in part, because the Proposed Acquisition will reduce the number of suppliers competing for customers in each market. Injectable drugs are administered intravenously, usually via a syringe or hollow needle. Generic versions of these drugs are usually launched after a branded product's patents expire, or a generic supplier successfully challenges such patents in court or reaches a legal settlement with the branded manufacturer. Once multiple generic suppliers enter a market, the branded drug manufacturer usually ceases to provide any competitive constraint on the prices for generic versions of the drug. Rather, the generic suppliers compete only against each other. Sometimes, however, a branded injectable drug manufacturer may choose to lower its price and compete against generic versions of the drug, in which case it would be a participant in the generic drug market.

The number of suppliers in generic pharmaceutical markets is critical because prices generally decrease as the number of competing generic suppliers increases. In addition, the injectable pharmaceutical industry generally, and the generic products at issue in this investigation in particular, are highly susceptible to supply disruptions caused by the inherent difficulties of producing sterile liquid drugs. Recent manufacturing problems have made it difficult for customers to obtain sufficient quantities of, and

Analysis to Aid Public Comment

contributed to price increases of, several of the generic injectable products impacted by this transaction. By reducing the number of competitors in these markets, the Proposed Acquisition will likely create a direct and substantial anticompetitive effect on prices for each of the relevant products, absent the remedies required by the proposed Consent Agreement.

The Proposed Acquisition will reduce current (or imminent) competition in the markets for each of the following generic injectable products: (1) amiodarone hydrochloride injection; (2) etomidate injection; (3) fluorouracil injection; (4) labetalol hydrochloride injection; (5) mesna injection; and (6) methotrexate sodium preservative-free injection. The structure of these markets is as follows:

- Amiodarone hydrochloride injection is an anti-arrhythmic cardiac drug of last resort used to treat patients with frequently recurring ventricular fibrillation or unstable ventricular tachycardia. The market for amiodarone hydrochloride injection is highly concentrated with only three current suppliers for the drug – Mylan, Fresenius Kabi AG (“Fresenius”), and Hikma Pharmaceuticals PLC. Mylan has a 60% share of the market. Agila has an approved Abbreviated New Drug Application (“ANDA”) from the U.S. Food and Drug Administration (“FDA”) and is about to enter this market, as is one other firm. Thus, the Proposed Acquisition would reduce the number of suppliers of generic amiodarone hydrochloride injection from five to four.
- Etomidate injection is an anesthetic agent used to induce general anesthesia and sedation for surgical procedures. There are currently four significant suppliers in this highly concentrated market – Mylan, Agila (which distributes its product through Pfizer Inc. and Sagent), Hospira, Inc. (“Hospira”), and American Regent, Inc. Absent a remedy, the Proposed Acquisition would substantially increase concentration in this market, provide the combined firm a market share of 46%, and reduce the number of suppliers of generic etomidate injection from four to three.

Analysis to Aid Public Comment

- Fluorouracil injection treats colon, rectal, breast, stomach, and pancreatic cancers. In this highly concentrated market, four firms have supplied fluorouracil injection in the recent past – Mylan, Fresenius, Teva Pharmaceutical Industries Ltd. (“Teva”), and Sandoz International GmbH. (“Sandoz”). A number of these suppliers, however, have experienced significant manufacturing issues. Agila is the only other company that currently holds an approved ANDA to sell generic fluorouracil in the United States. The Proposed Acquisition would reduce the number of firms capable of supplying generic fluorouracil injection from five to four.
- Labetalol hydrochloride injection treats severe hypertension. The market for labetalol hydrochloride injection is highly concentrated and only five firms are capable of supplying the drug today – Mylan, Agila, Hospira, Akorn, Inc., and Apotex Inc. Currently, Hospira and Akorn make most of the sales in this market, and Mylan, Agila, and Apotex are the only other firms with approved ANDAs and manufacturing facilities currently capable of producing this product. The Proposed Acquisition would reduce the number of firms capable of supplying generic labetalol hydrochloride injection from five to four.
- Mesna injection is a detoxifying agent used to prevent damage to the urinary tract caused by ifosfamide, a third-line chemotherapy drug used to treat germ cell testicular cancer. There are four current, significant suppliers of generic mesna injection – Mylan, Agila, Fresenius, and Baxter International Inc. The Proposed Acquisition would increase concentration in this market substantially, and reduce the number of current suppliers of generic mesna injection from four to three.
- Methotrexate sodium preservative-free injection treats several types of pediatric cancers, as well as certain autoimmune disorders such as rheumatoid arthritis and multiple sclerosis. Five firms currently supply the market for methotrexate sodium preservative-free injection – Mylan, Agila, Fresenius, Teva, and Hospira. The

Analysis to Aid Public Comment

Proposed Acquisition would reduce the number of current suppliers of this drug from five to four.

In addition, the Proposed Acquisition will significantly reduce future competition in the markets for the following generic injectable products: (1) acetylcysteine injection; (2) fomepizole injection; (3) ganciclovir injection; and (4) meropenem injection. In each of these markets, either Mylan or Agila, or both, currently do not supply an existing generic product, but will likely do so in the near future, and entry by one or both of the parties will likely increase price competition in that market significantly absent the Proposed Acquisition. The structure of each of these markets is as follows:

- Acetylcysteine injection prevents or minimizes liver damage resulting from acetaminophen overdose. There are two generic acetylcysteine injection products currently on the market, and Mylan and Agila are two of only a limited number of firms that have generic products in development. Therefore, the Proposed Acquisition would significantly reduce the number of likely future suppliers of generic acetylcysteine injection.
- Injectable fomepizole treats accidental poisoning caused by ethylene glycol or methanol ingestion. Three firms currently supply the highly concentrated market for generic fomepizole injection – Mylan, X-Gen Pharmaceuticals, Inc., and Sandoz. Agila is developing its own generic fomepizole injection product and likely would be the next firm to enter the market. As a result, the Proposed Acquisition would significantly reduce the number of suppliers of generic fomepizole injection in the near future.
- Ganciclovir injection is an antiviral medication used to treat patients with weakened immune systems, such as patients with HIV-AIDS and transplant recipients, to slow the growth of cytomegalovirus, a form of herpes virus that can lead to blindness. Currently, Roche Palo Alto, LLC (“Roche”) sells a branded product, Cytovene. Fresenius sells the only generic version of this drug. Mylan and

Analysis to Aid Public Comment

Agila are two of only a limited number of firms that have this drug in development. Therefore, the Proposed Acquisition would result in the reduction of likely future suppliers of generic ganciclovir injection.

- Meropenem injection is an ultra-broad spectrum antibiotic used as a last resort to treat serious bacterial infections in an intensive care setting. There are currently four suppliers of the drug – AstraZeneca PLC, Fresenius, Hospira, and Sandoz. All four of these companies, however, obtain their supplies of meropenem from two manufacturers. Mylan and Agila are two of only a limited number of firms that have a generic meropenem injection product in development. They are also the only likely entrants that will source their meropenem products from alternative manufacturing facilities. As a result, the Proposed Acquisition would significantly reduce the number of marketers, as well as the sources of manufacturing, of generic meropenem injection in the future.

Finally, the Proposed Acquisition will significantly reduce potential competition in one generic market that does not yet exist – the market for mycophenolate mofetil injections. This market would be highly concentrated when Mylan and Agila would likely enter it in the future. Mycophenolate mofetil injection is an immunosuppressant used in transplant medicine to subdue T-cell and B-cell production, reducing the risk of transplant rejection. Today, Roche sells its branded product, CellCept. When generic entry occurs, Mylan and Agila would likely be among a limited number of suppliers. Thus, the Proposed Acquisition would significantly reduce the number of likely future suppliers of this drug to the detriment of consumers.

Entry

Entry into each of these generic injectable product markets will not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the likely anticompetitive effects of the Proposed Acquisition. The combination of drug development times and regulatory requirements, including FDA approval, takes well in excess of two years.

Analysis to Aid Public Comment

Competitive Effects

Absent a remedy, the Proposed Acquisition would likely cause significant anticompetitive harm to consumers in the relevant generic injectable pharmaceutical markets, either by eliminating significant current or potential competition in concentrated existing markets, or by eliminating significant potential competition among a limited number of likely competitors in a future market. In each of these markets, Mylan and Agila are two of only a limited number of current or likely future suppliers of the drugs in the United States. The evidence shows that prices may continue to decrease even after a number of suppliers have entered a generic injectable drug market. Thus, although Mylan or Agila have not entered some of the markets at issue yet, both companies likely will compete in those markets in the future, and that competition is expected to reduce prices for consumers. The evidence also shows that the removal of an independent generic injectable drug supplier from the relevant markets in which Mylan and Agila currently compete would result in significantly higher prices post-acquisition. Therefore, by eliminating the significant current and future competition between the parties, the Proposed Acquisition will likely cause U.S. consumers to pay significantly higher prices for these generic injectable drugs, absent a remedy.

The Consent Agreement

The Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in each relevant market. Under the Consent Agreement, the parties are required to divest either Mylan's or Agila's rights and assets related to (1) amiodarone hydrochloride injection, (2) etomidate injection, (3) fluorouracil injection, (4) mesna injection, (5) methotrexate sodium preservative-free injection, (6) acetylcysteine injection, (7) fomepizole injection, (8) ganciclovir injection, (9) meropenem injection, and (10) mycophenolate mofetil injection. In addition, Mylan is required to release all of its rights and assets related to labetalol hydrochloride injection. The parties must accomplish these divestitures and relinquish their rights no later than ten days after the acquisition.

Analysis to Aid Public Comment

The proposed Consent Agreement requires Mylan to terminate its contract with Gland and to release all rights related to labetalol hydrochloride injection. Gland, a global pharmaceutical company based in India, is Mylan's contract manufacturer for this drug. Given its experience with this drug, Gland is well positioned to replicate the competition that would otherwise have been lost as a result of the Proposed Acquisition. The proposed Consent Agreement also requires Mylan to divest assets related to fluorouracil injection and methotrexate sodium preservative-free injection to Intas and to divest assets related to etomidate injection, ganciclovir injection, meropenem injection, and mycophenolate mofetil injection to JHP. In addition, the proposed Consent Agreement requires Agila and Strides to divest assets related to acetylcysteine injection and mesna injection to Sagent and to divest assets related to amiodarone hydrochloride injection and fomepizole injection to JHP. Intas is a global pharmaceutical company based in India with approximately 79 prescription drugs approved for sale in the United States, as well as an active product development pipeline. JHP is a New Jersey based pharmaceutical company with approximately 22 approved ANDAs and an active product development pipeline. Finally, Sagent, a pharmaceutical company based in Illinois, has approximately 58 approved ANDAs and an active product development pipeline. With their experience in generic markets, Intas, JHP, and Sagent are expected to replicate fully the competition that would otherwise have been lost as a result of the Proposed Acquisition.

The Commission's goal in evaluating possible acquirers of divested assets is to maintain the competitive environment that existed prior to the acquisition. If the Commission determines that Intas, JHP, Sagent, or Gland are not acceptable acquirers, or that the manner of the divestitures or releases is not acceptable, the parties must unwind the sale or release of rights to Intas, JHP, Sagent, or Gland and divest the products to a Commission-approved acquirer within six months of the date the Order becomes final. In that circumstance, the Commission may appoint a trustee to divest the products if the parties fail to divest the products as required.

The proposed Consent Agreement contains several provisions to help ensure that the divestitures are successful. The Order

Analysis to Aid Public Comment

requires Mylan, Agila, and Strides to take all action to maintain the economic viability, marketability, and competitiveness of the products to be divested until such time that they are transferred to a Commission-approved acquirer. Mylan and Agila must transfer their respective manufacturing technologies for generic amiodarone hydrochloride injection, etomidate injection, and fomepizole injection to JHP and must supply JHP with these drugs during the transition period. Further, Agila and Strides must transfer the manufacturing technology for acetylcysteine injection and mesna injection to Sagent and must supply Sagent with the two drugs during the transition period.

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

INTERLOCUTORY, MODIFYING,
VACATING, AND MISCELLANEOUS
ORDERS

HERTZ GLOBAL HOLDINGS, INC.

Docket No. C-4376. Order, July 11, 2013

Commission letter approving an acquirer for the divestiture of certain assets in connection with the acquisition of Dollar Thrifty by Hertz Global Holdings.

LETTER ORDER APPROVING DIVESTITURE

Michael H. Knight, Esq.
Jones Day

Dear Mr. Knight:

The Commission has issued its final Order in this matter, modified to incorporate changes that Hertz Global Holdings, Inc., Financial Services of North America, and Macquarie Capital have agreed to, and has added to Confidential Appendix H of the Order the amended agreements between The Hertz Corporation (“Hertz”) and Adreca Holdings Corp. (“Adreca”) for the divestiture of the DTAG Assets To Be Divested and the Additional Assets To Be Divested pursuant to Paragraphs II.A.2 and II.A.3 of the Decision and Order, all of which you submitted as a complete Confidential Appendix H on May 14, 2013.

The Commission has also approved the divestiture to Adreca of the Additional Assets To Be Divested pursuant to Paragraph II.A.3 of the Decision and Order, pursuant to the Divestiture Agreement, as amended. In according its approval, the Commission has relied upon the information submitted and representations made in connection with the proposed divestiture, and has assumed them to be accurate and complete.

By direction of the Commission, Commissioner Wright not participating.

Interlocutory Orders, Etc.

KINDER MORGAN, INC.

Docket No. C-4355. Order, October 28, 2013

Commission letter and order modifying the Commission's final order to permit respondent to extend a transition services agreement with the acquirer of the divested assets.

LETTER ORDER APPROVING TRANSITION SERVICES AGREEMENT

Laura A. Wilkinson, Esq.
Weil, Gotshal & Manges LLP

Dear Ms. Wilkinson:

This letter responds to the Request for Prior Approval and to Reopen Proceedings and Modify the Decision and Order ("Request") filed by Kinder Morgan, Inc. ("Kinder Morgan"), on August 7, 2013. The Request was placed on the public record for comments until September 13, 2013, and no comments were received. In its Order Reopening and Modifying Order, issued on October 28, 2013, the Commission has determined to reopen the Decision and Order ("Order") in this matter and modify it as requested by Kinder Morgan.

Kinder Morgan has also requested that, pursuant to Section 2.41 of the Federal Trade Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41 (2013), the Commission approve the modification to the Transitions Services Agreement ("TSA Modification") described in the Request. After consideration of the TSA Modification as set forth in the Request and supplemental documents, as well as other available information, and consistent with the Order as modified by the Order Reopening and Modifying Order, the Commission has determined to approve the TSA Modification. In according its approval, the Commission has relied upon the information submitted and representations made in connection with Kinder Morgan's Request, and has assumed them to be accurate and complete.

By direction of the Commission, Chairwoman Ramirez not participating, and Commissioner Wright abstaining.

Interlocutory Orders, Etc.

ORDER REOPENING AND MODIFYING ORDER

On August 7, 2013, Kinder Morgan, Inc. (“Kinder Morgan”) filed a petition pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), and Section 2.51 of the Commission’s Rules of Practice, 16 C.F.R. § 2.51, asking the Commission to reopen and modify the consent order in Docket No. C-4355 (“Order”) issued by the Commission on June 6, 2012.

The Order requires Kinder Morgan, in connection with the divestiture of certain natural gas pipeline and related assets, to provide transitional assistance to the acquirer of the assets for a period not to exceed nine months. Kinder Morgan divested the required assets to Tallgrass Energy Partners LP (“Tallgrass”) on November 21, 2012, and entered into an agreement to provide transitional assistance to Tallgrass. In its petition, Kinder Morgan, for itself and Tallgrass, asks that the Commission reopen the Order and extend the time period allowed for the transitional assistance from nine to fourteen months with an option by the acquirer to extend the period for five additional one-month periods (subject to approval by the Commission).

Kinder Morgan bases its petition on changed conditions of fact that it claims are sufficient to warrant reopening and modifying the Order. Kinder Morgan also claims that the proposed modification would be in the public interest. For the reasons stated below, the Commission has determined to grant the petition.

Background

On October 16, 2011, Kinder Morgan entered into an agreement to acquire El Paso Corporation (“El Paso”). Both Kinder Morgan and El Paso owned natural gas pipelines in the Rocky Mountain region of Wyoming and Colorado that raised competitive concerns for the Commission. To resolve its concerns, the Commission issued the Order on June 6, 2012, requiring Kinder Morgan to divest certain natural gas pipelines and related assets.

Paragraph II.D. of the Commission’s Order also requires Kinder Morgan to provide certain transition services to the

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acquirer of the divested assets for a period “not to exceed nine (9) months” from the date of divestiture. Transitional assistance includes administrative and technical assistance relating to the operation of natural gas pipeline systems and pipeline business. Such assistance allows time for a purchaser to transfer highly automated systems that control pipelines and is common, even necessary, when pipeline assets are sold.

At the same time that Kinder Morgan completed the sale of the pipeline assets to Tallgrass, it also entered into a Transition Services Agreement (“TSA”) with Tallgrass that commenced on November 21, 2012, and terminated on August 13, 2013. Before termination of the agreement, however, at the request of Tallgrass, Kinder Morgan and Tallgrass agreed to extend the time period by five months with an option by Tallgrass to extend the time further for up to five successive one-month periods, for a potential total of a ten-month extension (subject to approval by the Commission).

The TSA obligates Kinder Morgan to provide services and software support to Tallgrass in twenty-two distinct categories, and as of the date of the petition, transitional services were no longer needed for approximately twelve of those categories. If Kinder Morgan is not allowed to extend the time period for providing the transitional assistance, Tallgrass will be unable to operate the assets and properly conduct its business. As a result, Tallgrass would be unable to effectively compete and so the requested extension would benefit consumers as well as Tallgrass.

Standard to Reopen and Modify

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b) provides that the Commission shall reopen an order to consider whether it should be modified if the respondent “makes a satisfactory showing that changed conditions of law or fact” so require.¹ A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes either eliminate the

¹ See *Supplementary Information, Amendment to 16 CFR 2.51(b)*, (“Amendment”), 65 Fed. Reg. 50636, August 21, 2000.

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need for the order or make continued application of it inequitable or harmful to competition.²

Section 5(b) also provides that the Commission may reopen and modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification.³ In the case of “public interest” requests, FTC Rule of Practice 2.51(b) requires an initial “satisfactory showing” of how the modification would serve the public interest before the Commission determines whether to reopen an order.

A “satisfactory showing” requires, with respect to public interest requests, that the petitioner make a prima facie showing of a legitimate public interest reason or reasons justifying relief. A request to reopen and modify will not contain a “satisfactory showing” if it is merely conclusory or otherwise fails to set forth by affidavit(s) specific facts demonstrating in detail the reasons why the public interest would be served by the modification.⁴ This showing requires the requester to demonstrate, for example, that there is a more effective or efficient way of achieving the purposes of the order, that the order in whole or part is no longer needed, or that there is some other clear public interest that would be served if the Commission were to grant the requested relief. In addition, this showing must be supported by evidence that is credible and reliable.

If, after determining that the requester has made the required showing, the Commission decides to reopen the order, the Commission will then consider and balance all of the reasons for and against modification. In no instance does a decision to reopen

² S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) (“Hart Letter”). See also *United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992).

³ Hart Letter at 5; 16 C.F.R. § 2.51.

⁴ 16 C.F.R. § 2.51.

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an order oblige the Commission to modify it,⁵ and the burden remains on the requester in all cases to demonstrate why the order should be reopened and modified. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders.⁶ All information and material that the requester wishes the Commission to consider shall be contained in the request at the time of filing.⁷

The Public Interest Warrants Reopening and Modifying the Order

The Commission has determined that (i) the public interest requires that the Order be reopened and (ii) the Order should be modified to extend the time period allowed for Kinder Morgan to provide transitional assistance to the acquirer of the divested assets.⁸ The purpose of the Order is to maintain competition in the market for transportation of natural gas in geographic markets located in Wyoming and Colorado. Without the continuing transitional assistance, Tallgrass will not be able to properly conduct the business acquired from Kinder Morgan and its ability to effectively compete in these markets will be materially diminished.

Providing an acquirer with necessary transitional assistance is an important component of the divestiture itself. In its orders, the Commission often requires respondents to provide transitional assistance to allow time for an acquirer to transfer or develop the assets necessary to operate the divested business. Because of concerns about "ongoing entanglements" among competitors, however, the Commission also seeks to limit the length of time

⁵ See *United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) (reopening and modification are independent determinations).

⁶ See *Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

⁷ 16 C.F.R. § 2.51(b).

⁸ Kinder Morgan has asserted both changed conditions of fact and public interest grounds in support of its petition. Because the Commission has determined that Kinder Morgan has demonstrated the public interest supports the modification, the Commission need not consider whether conditions of fact have indeed changed since it issued the Order.

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that transitional assistance is provided. In this instance, the Commission does not believe that extending the time period as requested by both Kinder Morgan and Tallgrass will raise a concern about ongoing entanglements or otherwise frustrate achieving the remedial purposes of the Order.

Conclusion

For the reasons explained above, the Commission has determined to reopen and modify Paragraph II.D. of the Order. Accordingly,

IT IS ORDERED that this matter be, and it hereby is, reopened; and

IT IS FURTHER ORDERED that Paragraph II.D. of the Order be revised to read:

At the request of the Acquirer, pursuant to an agreement that receives the prior approval of the Commission, Respondent shall, for a period not to exceed nineteen (19) months from the date Respondent divests the KM Pipeline Assets, or as otherwise approved by the Commission, provide Transitional Assistance to the Acquirer: . . .

By the Commission, Chairwoman Ramirez not participating, and Commissioner Wright abstaining.

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PINNACLE ENTERTAINMENT, INC.

Docket No. D-9355. Order, November 20, 2013

Order approving Pinnacle Entertainment, Inc.'s divestiture of all assets associated with Ameristar Casinos, Inc.'s casino and hotel project under construction in Lake Charles, Louisiana to GNLC Holdings, Inc.

LETTER ORDER APPROVING APPLICATION FOR APPROVAL OF
DIVESTITURE OF THE AMERISTAR LOUISIANA ASSETS

Jonathan S. Gowdy, Esquire
Morrison & Foerster LLP

Dear Mr. Gowdy:

This letter responds to the Application for Approval of Divestiture of the Ameristar Louisiana Assets ("Ameristar Louisiana Application") filed by Pinnacle Entertainment, Inc. on August 30, 2013. The Ameristar Louisiana Application requests that the Federal Trade Commission approve, pursuant to the Order in this matter, Pinnacle's proposed divestiture of the Ameristar Louisiana Assets to GNLC Holdings, Inc., the parent company of Landry's, Inc. The Application was placed on the public record for comments until November 12, 2013, and no comments were received.

After consideration of the proposed divestiture as set forth in Pinnacle's Ameristar Louisiana Application and supplemental documents, as well as other available information, the Commission has determined to approve the proposed divestiture. In according its approval, the Commission has relied upon the information submitted and representations made in connection with Pinnacle's Ameristar Louisiana Application and has assumed them to be accurate and complete.

By direction of the Commission.

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McWANE, INC.

*Docket No. D-9351. Order, November 21, 2013*ORDER EXTENDING TIMETABLE FOR ISSUING
FINAL DECISION AND ORDER

In order to ensure that it can give full consideration to the many issues presented by the cross-appeals in this matter, the Commission has determined, pursuant to Commission Rule 4.3(b), 16 C.F.R. § 4.3(b), to extend until January 24, 2014 the timetable for issuing a final decision and order.

IT IS SO ORDERED.

By the Commission.

AJM PACKAGING CORPORATION
AND ABRAM EPSTEIN*Docket No. C-3508. Order, November 25, 2013*

Order vacating the prior consent order entered at 118 F.T.C. 56 (1994) and issuing a new order prohibiting respondent from making representations or causing anyone else to make representations regarding the degradability of respondents' products unless certain conditions are met, in accordance with the federal district court's ruling in a parallel proceeding.

ORDER TO SHOW CAUSE AND ORDER VACATING ORDER AS TO
AJM PACKAGING CORPORATION AND ISSUING NEW ORDER AS TO
AJM PACKAGING CORPORATION

The Federal Trade Commission ("FTC" or "Commission") issued a Decision and Order against AJM Packaging Corporation

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(“AJM”) and Abram Epstein in Docket C-3508 (“1994 Order”) on July 19, 1994.¹ On September 30, 2013, the Commission filed a complaint in federal district court alleging that AJM violated the 1994 Order by making false and unsubstantiated claims regarding certain paper products.

On October 1, 2013, Judge Beryl A. Howell in the District for the District of Columbia entered a Stipulated Order for Permanent Injunction and Civil Penalty Judgment (“Stipulated Order”) resolving the 2013 action. In Section III of the Stipulated Order, AJM consented: (1) to reopening this proceeding; (2) to waiving any rights it might otherwise have under the show cause procedures set forth in Commission Rule 3.72(b), 16 C.F.R. § 3.72(b); (3) to vacating the 1994 Order as to AJM; and (4) to issuing a new FTC order as to AJM as set forth below.

In view of the foregoing, the Commission has determined that it is in the public interest to reopen the proceeding in Docket No. C-3508 pursuant to Commission Rule 3.72(b), 16 C.F.R. § 3.72(b); to vacate the 1994 Order as to AJM; and to issue a new order as to AJM as set forth below. Accordingly,

IT IS ORDERED that this matter be, and it hereby is, reopened; and

IT IS FURTHER ORDERED that, AJM having consented to vacating the 1994 Order as to it and to issuing a new order as follows, the Commission hereby vacates the 1994 Order as to AJM and issues the attached Decision and Order, which shall become final upon delivery of this Order and the Decision and Order to AJM by any means specified in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a):

DECISION AND ORDER

The Federal Trade Commission having filed a complaint in Federal District Court on September 30, 2013, alleging that Respondent AJM Packaging Corporation (“AJM”) had violated

¹ *In the Matter of AJM Packaging Corporation and Abram Epstein*, 118 F.T.C. 56 (1994).

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the Decision and Order in *In the Matter of AJM Packaging Corp., et al.*, 118 F.T.C. 56 (1994), by making false and unsubstantiated claims regarding certain paper products; and

AJM, its attorney, and counsel for the Commission having thereafter executed, and the District Court having thereafter entered, a Stipulated Order for Permanent Injunction and Civil Penalty Judgment in which AJM consented, *inter alia*, to vacating the 1994 Order as to AJM, and to issuing a new Commission Order as to AJM as set forth below;

Now in further conformity with the procedure prescribed in Commission Rule 3.72(b), 16 C.F.R. § 3.72(b), the Commission hereby issues a new Decision and Order as to AJM, as set forth below.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. “Clearly and prominently” means
 - A. In print communications, the disclosure shall be presented in a manner that stands out from the accompanying text, so that it is sufficiently prominent, because of its type size, contrast, location, or other characteristics, for an ordinary consumer to notice, read and comprehend it;
 - B. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the disclosure shall be made through the same means through which the communication is presented. In any communication disseminated by means of an interactive electronic medium such as software, the Internet, or online services, the

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disclosure must be unavoidable. Any audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual disclosure shall be presented in a manner that stands out in the context in which it is presented, so that it is sufficiently prominent, due to its size and shade, contrast to the background against which it appears, the length of time it appears on the screen, and its location, for an ordinary consumer to notice, read and comprehend it; and

- C. Regardless of the medium used to disseminate it, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any communication.
2. “Close proximity” means on the same print page, web page, online service page, or other electronic page, and proximate to the triggering representation, and not accessed or displayed through hyperlinks, pop-ups, interstitials, or other means.
 3. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
 4. “Competent and reliable scientific evidence” means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results, and that are sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that a representation is true.
 5. “Customary disposal” means any disposal method whereby respondent’s products ultimately will be

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disposed of in a landfill, in an incinerator, or in a recycling facility.

6. “Degradable” includes biodegradable, oxo-biodegradable, oxo-degradable, or photodegradable, or any variation thereof.
7. “Landfill” means a municipal solid waste landfill that receives household waste. “Landfill” does not include landfills that are operated as bioreactors or those that are actively managed to enhance decomposition.
8. “Product or package” means any product or package, including but not limited to bags and plates, that is offered for sale, sold, or distributed to the public by respondent and any such product or package sold or distributed to the public by third parties that is manufactured by respondent.
9. Unless otherwise specified, “respondent” means AJM Packaging Corporation, its successors and assigns and its officers, agents, representatives, and employees.

Part I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any paper product or package in or affecting commerce, shall not represent, in any manner, expressly or by implication, that any such product or package is degradable, unless

- A. the entire item will completely decompose into elements found in nature within one year after customary disposal; or
- B. the representation is clearly and prominently and in close proximity qualified by: (1) the time to complete decomposition after customary disposal; or (2) the time to complete decomposition after non-customary disposal, the type of non-customary disposal facility or

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method, and the availability of such facility or method to consumers where the item is marketed or sold,

and such representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. Any technical protocol (or combination of protocols) must assure complete decomposition within one year or a stated time frame and must replicate, i.e., simulate, the physical conditions found in the type of disposal facility stated in the representation (e.g., in landfills, where most trash is disposed).

Part II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any paper product or package, in or affecting commerce, shall not represent in any manner, expressly or by implication, that any such product or package is compostable, unless

- A. all materials in the item will break down into, or become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner (i.e., in the same time as the materials with which it is composted)
 - 1. in a home composting pile or device;
 - 2. in a municipal or institutional composting facility that is available to a substantial majority of consumers or communities where the item is sold and respondent discloses clearly and prominently and in close proximity to the representation that the item is only compostable in such a facility; or
 - 3. in a municipal or institutional composting facility that is not available to a substantial majority of consumers or communities and respondent discloses clearly and prominently and in close

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proximity to the representation: (i) that the item is only compostable in such a facility and (ii) the limited availability of municipal or institutional composting facilities that compost the item, such as by disclosing the percentage of consumers or communities that have access to such facilities;

- B. and such representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Part III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any paper product or package, in or affecting commerce, shall not represent in any manner, expressly or by implication, that any such product or package is recyclable, unless

- A. the entire item can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item;
- B. recycling facilities that accept the item for recycling are available
 - 1. to a substantial majority (at least sixty percent) of consumers or communities where the item is sold; or
 - 2. to less than a substantial majority (at least sixty percent) of consumers or communities where the item is sold and respondent discloses clearly and prominently and in close proximity to the representation the limited availability of recycling for the item and the extent to which it is limited, such as by disclosing the percentage of consumers or communities that have access to facilities that recycle such item;

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and such representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Part IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product or package, in or affecting commerce shall not represent, in any manner, expressly or by implication, that any such product or package offers any environmental benefit, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

Part V.

This Order will terminate on November 25, 2033, or twenty (20) years from the most recent date that the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this Order that terminates in less than twenty (20) years;
- B. This Order's application to any respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Part as though the complaint had never been

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filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

RESPONSES TO PETITIONS TO QUASH OR LIMIT COMPULSORY PROCESS

NATIONAL PROCESSING CO. AND VANTIV, INC.

FTC File No. 132 3105. Order, September 6, 2013.

OPINION AND ORDER DENYING PETITION TO QUASH CIVIL INVESTIGATIVE DEMANDS

By WRIGHT, Commissioner.

On August 15, 2013, Petitioners, National Processing Co. (“NPC”) and Vantiv, Inc. (collectively the “Vantiv Entities”) filed a timely Petition to Quash Commission Civil Investigative Demands (“CIDs”) dated July 24, 2013. For the reasons set forth below, the Commission denies the Petition to Quash (“Petition”) and orders the Vantiv Entities to comply with the CIDs on or before September 13, 2013.

I. BACKGROUND

The Commission’s investigation of the Vantiv Entities concerns activities that are distinct from, but related to, the acts and practices that led to the Commission enforcement action, *FTC v. A+ Financial Center, LLC, et al.*, No. 12-CV-14373-DLG (S.D. Fla. filed Oct. 23, 2012), filed under the authority of 15 U.S.C. §53(b). The *A+ Financial* complaint alleges that the defendants violated Section 5(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §45(a), and the Commission’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, by deceptively marketing credit card interest rate reduction services to consumers struggling with high credit card debt, illegally collecting an advance fee for their purported services, and illegally using prerecorded calls to contact consumers. Neither NPC nor Vantiv is a defendant in the *A+ Financial* enforcement action. Nonetheless, from December 2009 through October 2012, NPC (a credit card processor) processed the majority of the allegedly illegal advance fees that consumers paid to the *A+ Financial* defendants. Vantiv acquired NPC as a wholly-owned subsidiary in November 2010.

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On July 24, 2013, the Commission issued a separate CID to each of the Vantiv Entities as part of its investigation into the Vantiv Entities' role in, and knowledge of, the illegal acts and practices of the *A+ Financial* defendants. The documents sought in these CIDs (the "July 24, 2013 CIDs") will help the Commission evaluate whether the Vantiv Entities violated the FTC Act or the TSR. Each CID contains 14 identical document production specifications and a single interrogatory requesting an explanation for the spoliation, if any, of responsive documents.

On August 6, 2013, after it issued the CIDs, the Commission served the Vantiv Entities with subpoenas under Fed. R. Civ. P. 45. The subpoenas seek the same documents as the CIDs. Commission counsel issued these subpoenas, in part, because the presiding judge in the *A+ Financial* enforcement action had suggested that Commission counsel consider sharing any documents produced by the Vantiv Entities with the court-appointed receiver in that enforcement action. However, as a consequence of statutory and regulatory restrictions, Commission counsel could not readily share documents produced in response to a CID with the receiver.¹ The return date on the Rule 45 subpoenas was August 19, 2013. On that date, in a letter to Commission counsel, the Vantiv Entities objected to the subpoenas without producing any documents.

On August 15, 2013, the Vantiv Entities responded to the issuance of the Commission's CIDs by filing a Petition to Quash.² In their Petition to Quash, the Vantiv Entities argue that the Commission's authority to issue the CIDs terminated when Commission counsel issued Rule 45 subpoenas seeking the same information in the *A+ Financial* enforcement action.

¹ Documents produced to the Commission in response to a CID are non-public, and their disclosure is subject to various statutory and regulatory restrictions. 15 U.S.C. §57b-2; 16 C.F.R. §4.10. Documents produced to the Commission in response to Rule 45 subpoenas are not subject to these restrictions.

² See 15 U.S.C. §57b-1(f) and 16 C.F.R. §2.10. This Petition stayed compliance with the CIDs' original August 19, 2013, return date. 16 C.F.R. §2.10(b).

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II. ANALYSIS

The Commission has broad authority under 15 U.S.C. §57b-1 to issue CIDs to further any “Commission investigation”—*i.e.*, “any inquiry conducted by a Commission investigator for the purpose of ascertaining whether any person is or has been engaged in any unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. §57b-1(a)(2). The Commission may issue CIDs at any time before it starts an “adjudicative proceeding.” 15 U.S.C. § 57b-1(j)(1).

It is settled that, until the Commission names a person as a defendant or a respondent in a complaint, the Commission is not engaged in an adjudicative proceeding with regard to that person and remains solely in an investigative posture. *Genuine Parts Co. v. F.T.C.*, 445 F.2d 1382, 1388 (5th Cir. 1971); *United States v. Anaconda Co.*, 445 F. Supp. 486, 496-97 (D.D.C. 1977); *United States v. Associated Merch. Corp.*, 261 F. Supp. 553, 558 (S.D.N.Y. 1966). *See also In re: Subpoena Duces Tecum Addressed to Atlantic Richfield Co., et al.*, No. 741-0019, 1978 WL 434436, at *6 (F.T.C. June 2, 1978) (discussing *In re: Horizon Corp.*, No. 9017, 88 F.T.C. 208, 1976 WL 180725, at *1 (July 28, 1976), where the Commission properly issued investigative subpoenas to investigate third-party lenders who had financed the land development activities of respondents in an FTC administrative adjudicative proceeding).

Because the Commission did not name either of the Vantiv Entities as a defendant in the A+ *Financial* enforcement action, it necessarily follows that the Commission may issue CIDs to them. The cases cited by the Petitioners (Petition at 6-7) do not suggest otherwise. Indeed, they uniformly hold that the Commission may issue CIDs to anyone *at least* until the Commission commences an adjudicatory proceeding against that person.³

³ The Commission may also issue CIDs to a party already in adjudication with the Commission where the Commission is investigating whether that party committed violations beyond those alleged in the pending adjudication. *See Resolution Trust Corp. v. Grant Thornton*, 41 F.3d 1539, 1545-46 (D.C. Cir. 1994) (“[A]n agency’s investigative powers survive the commencement of litigation where the agency seeks to uncover *additional wrongdoing*.” (emphasis in original)); Commission Letter to Mr. Glynn, Counsel to Dr. William V. Judy, Denying Petition to Quash, F.T.C. File No. X000069 (Sept.

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Nor is there any inconsistency in the contemporaneous issuance of CIDs and Rule 45 subpoenas. The Commission has good reason to pursue this dual-track effort: the CIDs are justified by the Commission's ongoing investigation of the conduct of the Vantiv Entities for violations of the FTC Act and the TSR, and the Rule 45 subpoenas are justified by the Vantiv Entities' business relationship with the defendants. The issuance of the Rule 45 subpoenas does not somehow void otherwise valid CIDs. The July 24, 2013 CIDs and the Rule 45 subpoenas simply constitute alternative and appropriate routes to the same overriding Commission objective: prompt production of the documents the Commission needs.⁴

Finally, having denied the Petition to Quash, the Commission may now commence CID enforcement proceedings, pursuant to 15 U.S.C. §57b-1(e) and 16 C.F.R. §2.13(b), at any time after the new return date if the Vantiv Entities do not comply. We have full confidence that any proceedings to enforce the Rule 45 subpoenas and the July 24, 2013 CIDs will be managed in a manner that both expeditiously secures the necessary documents from the Vantiv Entities and promotes judicial economy.

III. CONCLUSION

For all the foregoing reasons,

IT IS HEREBY ORDERED THAT the Petition of Vantiv, Inc. and National Processing Co. be, and hereby is, **DENIED**.

10, 2002) ("It is axiomatic that the Commission's authority to investigate one product is not cut off by the filing of a federal lawsuit relating to another."); *see also United States v. Litton Indus., Inc.*, 462 F.2d 14, 16 (9th Cir. 1972); *FTC v. Waltham Watch Co.*, 169 F. Supp. 614, 619-20 (S.D.N.Y. 1959).

⁴ On August 22, 2013, after the return date on the Rule 45 subpoenas had passed and the Vantiv Entities had produced no documents, the Commission moved to compel compliance with the subpoenas in the federal district courts for the Southern District of Ohio (as to Vantiv) and the Western District of Kentucky (as to NPC). The Vantiv Entities' responses are due on September 16, 2013.

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IT IS FURTHER ORDERED THAT Petitioners Vantiv, Inc. and National Processing Co. shall comply in all respects with the July 24, 2013 CIDs on or before September 13, 2013.

By the Commission.

AEGIS MOBILE LLC

FTC File No. 132 3247. Order, October 24, 2013.

ORDER STAYING PETITION TO QUASH PROCEEDINGS

On September 24, 2013, Petitioner, Aegis Mobile, LLC (“Aegis”) filed a petition to quash a civil investigative demand (“CID”) issued by the Commission to Aegis in response to a request by the Competition Bureau Canada (“Competition Bureau”) for investigative assistance.¹ The CID requested materials needed by the Competition Bureau in connection with its enforcement litigation in Canada against Bell Canada, Rogers Communications Inc., Telus Corporation, and the Canadian Wireless Telecommunications Association (collectively, the “Canadian Companies”). In the Canadian proceeding, currently pending in Ontario Superior Court, the Competition Bureau alleges that the Canadian Companies engaged in the deceptive marketing of premium text messaging and digital content services. The FTC’s CID in aid of the Canadian proceedings sought materials from Aegis regarding the marketing of premium text messages and rich content in Canada, as well as Aegis’s work for and on behalf of the Canadian Companies.

The Commission issued the CID pursuant to its authority under Section 6(j) of the Federal Trade Commission Act (“FTC

¹ Pursuant to Section 2.10(5)(b) of the Commission’s Rules of Practice, 16 C.F.R. § 2.10(5)(b), the timely filing of a petition to quash a CID stays the remaining period of time permitted for compliance.

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Act”), which was added to the FTC Act by the U.S. SAFE WEB Act of 2006.² Specifically, the statute authorizes the Commission to assist foreign law enforcement agencies in their investigations of, or enforcement proceedings against, “possible violations of laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any provision of the laws administered by the Commission.” 15 U.S.C. § 46(j). Section 6(j) gives the Commission two routes to provide such assistance. Under Section 6(j)(2)(A), the Commission may “conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance, using all investigative powers authorized by [the FTC Act]; . . .” 15 U.S.C. § 46(j)(2)(A). Under Section 6(j)(2)(B), the Commission may also – “when the request is from an agency acting to investigate or pursue the enforcement of civil laws” – “seek and accept appointment by a United States district court of Commission attorneys to provide assistance to foreign and international tribunals and to litigants before such tribunals on behalf of a foreign law enforcement agency pursuant to section 1782 of Title 28.” 15 U.S.C. § 46(j)(2)(B).

Due to the recent interruption in U.S. government operations, considerable time has elapsed since the Commission received the request for assistance in obtaining access to materials that are highly relevant to the Competition Bureau’s pending litigation in Canada. Accordingly, the Commission finds that greater expedition is warranted and, therefore, has determined to stay the instant petition to quash proceedings while it exercises its authority under Section 6(j)(2)(B) of the FTC Act, 15 U.S.C. § 46(j)(2)(B), to institute a proceeding under 28 U.S.C. § 1782. In that proceeding, the Commission will seek an appointment of Commission attorneys by the United States District Court for the District of Maryland to obtain information needed by the Competition Bureau for use in the Canadian enforcement proceedings.³ In staying the instant proceedings, the Commission expresses no views on the substantive issues raised by Aegis’s petition to quash. Accordingly,

² Pub. L. No. 109-455, 120 Stat. 3372 (2006).

³ Aegis’s obligation to comply with the Commission’s CID shall remain stayed pending disposition of the petition to quash. *See supra* note 1.

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IT IS HEREBY ORDERED THAT consideration of the Petition of Aegis Mobile, LLC is **STAYED** pending the federal courts' disposition of an application by the Commission pursuant to 28 U.S.C. § 1782.

By the Commission.

HEALTHYLIFE SCIENCES, LLC

FTC File No. 122 3287. Order, December 20, 2013.

OPINION AND ORDER DENYING PETITION
TO LIMIT CIVIL INVESTIGATIVE DEMAND

By WRIGHT, Commissioner.

On November 22, 2013, petitioner HealthyLife Sciences, LLC ("HLS") filed a petition to limit a Civil Investigative Demand ("CID") issued by the Commission in connection with its investigation of certain HLS products and policies. For the reasons stated below, the Commission denies the petition.

I. BACKGROUND

Through a variety of advertising and marketing platforms, HLS claims that its "Healthe Trim" brand dietary supplements help users lose weight. In response to these claims and other marketing practices, the Commission's Division of Advertising Practices opened an investigation to determine whether HLS may have violated Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52.

On October 30, 2013, as part of this investigation, the Commission issued a CID seeking materials relating to Healthe Trim products ("Specified Products"), including Healthe Trim

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Original Formula (“Original Formula”) and three derivative products.¹ The CID seeks information and materials relating to HLS and its products, including copies of advertisements and HLS’s substantiation for its weight-loss claims. The CID also seeks copies of any documents reflecting relevant communications between HLS and regulatory authorities or consumer protection entities, including the Food and Drug Administration, the U.S. Postal Service, the Better Business Bureau, and the National Advertising Division (“NAD”), which is one of four self-regulatory advertising programs administered by the Council of Better Business Bureaus. The CID directed HLS to produce the responsive materials and information by November 25, 2013.

On November 21, 2013, counsel for HLS sent a letter to FTC staff regarding Original Formula’s inclusion in the CID’s definition of “Specified Products.” HLS sought to exclude Original Formula from the scope of the CID because HLS had already produced some responsive documents to the NAD in response to that organization’s own review of HLS’s substantiation for the weight-loss claims for Original Formula.² HLS argued that requiring it to produce these documents to the FTC as well would impose an undue burden. FTC staff and HLS counsel were unable to resolve the dispute. The following day, HLS filed this Petition to Limit Civil Investigative Demand

¹ Instruction O defines “Specified Products” as “all Healthe Trim dietary supplements promoted for weight loss, including but not limited to Healthe Trim Original Formula, Healthe Trim powered by Raspberry Ketone, Healthe Trim powered by Green Coffee Bean, and Healthe Trim powered by Garcinia Cambogia.”

² That review had begun in July 2012, after the NAD received a letter from the Council for Responsible Nutrition challenging thirteen claims appearing in HLS’s advertising. Participation in an NAD inquiry is voluntary, and advertisers may decide whether they wish to comply with the NAD’s recommendations to discontinue advertising claims. If an advertiser refuses to participate in the NAD process (*i.e.*, if it does not respond to the NAD’s request to produce substantiation for advertising claims), or declines to follow the recommendations of the NAD, the advertiser may be referred to the appropriate government agency (generally the FTC) for consideration of further action. See Policies and Procedures by the Advertising Self-Regulatory Council (as amended Sept. 24, 2012) ¶¶ 2.10(B) and 4.1(B), available at <http://www.ascreviews.org/wp-content/uploads/2012/10/NAD-CARU-NARB-Procedures-Updated-10-9-12.pdf>.

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(“Petition”), asking the Commission to exclude Original Formula from that definition. (Pet. at 1).

II. ANALYSIS

HLS principally contends that compliance with the CID would be unduly burdensome because HLS previously submitted some of the materials regarding Original Formula to the NAD in connection with NAD’s ongoing inquiry. (Pet. at 3-5). That assertion lacks merit.

As a preliminary matter, HLS has not met its evidentiary burden in seeking to limit the CID because it has not provided any affidavits or other evidence that would establish that producing these materials would unduly disrupt or seriously hinder its normal operations. *See, e.g., FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992); *FTC v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977). Indeed, one would expect that producing materials that HLS has already largely compiled for the NAD proceedings would involve minimal additional effort.

In addition, HLS’s petition rests on a false premise: that an NAD investigation into deceptive advertising somehow obviates the need for an FTC investigation. In fact, an FTC investigation is typically broader in its substantive scope. For example, FTC staff will consider a marketer’s entire advertising campaign in multiple media channels over a long period, whereas the NAD usually examines only selected components of a marketer’s advertising. Moreover, as shown by the CID’s specifications, FTC staff is examining a wide variety of issues that NAD did not fully study, such as HLS’s continuity programs, its “free” trial offers, and its material connections with endorsers. Also, the CID seeks information and materials relating to a broader set of remedies, such as consumer redress, that FTC staff may want to consider after completing its review of HLS’s practices.

In any event, even were the NAD and FTC investigations identical in scope, an advertiser’s participation in a parallel self-regulatory program cannot limit an FTC inquiry. To be sure, the NAD is an important partner in protecting American consumers from deceptive advertising. As the Commission has noted, it

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“will not necessarily defer, however, to a finding by a self-regulation group,” and instead must discharge its responsibilities by “mak[ing] its judgment independently, evaluating each case on its merits.” *Policy Statement Regarding Advertising Substantiation* (appended to *Thompson Med. Co.*, 104 F.T.C. 648, 839 (1984), *aff’d*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987)).³

III. CONCLUSION AND ORDER

For the foregoing reasons, **IT IS HEREBY ORDERED THAT** the Petition to Limit Civil Investigative Demand filed by HealthyLife Sciences, LLC be, and it hereby is, **DENIED**; and

IT IS FURTHER ORDERED THAT all responses to the specifications in the Civil Investigative Demand to HealthyLife Sciences, LLC, must be produced on or before January 17, 2014.

By the Commission.

³ Available at <http://www.ftc.gov/ftc-policy-statement-regarding-advertising-substantiation>. HLS contends that compliance with the CID, to the extent it overlaps with the NAD’s inquiry, would “significantly reduce[] the motivation and incentive for companies to participate in the NAD self-regulatory process in the first place.” (Pet. at 5). We disagree. The risk of public exposure and referral to authorities should provide ample incentive for advertisers to cooperate with the NAD.