

Complaint

IN THE MATTER OF

**SUN PHARMACEUTICAL INDUSTRIES LTD.,
RANBAXY LABORATORIES LTD., AND DAIICHI
SANKYO CO., LTD.**

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

Docket No. C-4506; File No.141 0134

Complaint, January 30, 2015 – Decision, March 18, 2015

This consent order addresses the \$4 billion acquisition by Sun Pharmaceutical Industries Ltd. (“Sun”) of Ranbaxy Laboratories Ltd. (“Ranbaxy”). According to the FTC’s complaint, the merger would likely harm future competition by reducing the number of suppliers in the U.S. markets for three dosage strengths (50 mg, 75 mg, and 100 mg) of generic minocycline tablets. Ranbaxy is currently one of three suppliers of the products, while Sun is one of only a limited number of firms likely to sell generic minocycline tablets in the United States in the near future. As Sun’s entry likely would have resulted in significantly lower prices for these drugs, the complaint alleges that the acquisition would substantially lessen competition in violation of Section 7 of the Clayton Act. Under the order, Sun is required to divest Ranbaxy’s interests in generic minocycline tablets to India-based Torrent Pharmaceuticals Ltd., a global drug company that markets generic drugs in the United States. Sun must also sell Ranbaxy’s generic minocycline capsules to Torrent to enable Torrent to obtain regulatory approval for its tablets as quickly as Ranbaxy would have absent the deal.

Participants

For the *Commission*: Aylin M. Skroejer, David Von Nirschl, and Elyssa L. Wenzel.

For the *Respondents*: Ronan P. Harty, Lincoln P. Mayer, and Tina D. Wang, Davis Polk & Wardwell LLP; Stacey A. Mahoney, Thane D. Scott, and Darren S. Tucker, Morgan, Lewis & Bockius LLP; Jessica K. Delbaum, Elan DiMaio, and Timothy J. Haney, Shearman & Sterling LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the

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Federal Trade Commission (“Commission”), having reason to believe that Respondent Sun Pharmaceutical Industries Ltd. (“Sun”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent Ranbaxy Laboratories Ltd., (“Ranbaxy”), a subsidiary of Respondent Daiichi Sankyo Co., Ltd. (“Daiichi Sankyo”), both of which are corporations subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, 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 Sun is a corporation organized, existing, and doing business under and by virtue of the laws of the Republic of India, with its headquarters located at Acme Plaza, Andheri Kurla Road, East Andheri, Mumbai, 400 059, India. The headquarters for Sun’s U.S. subsidiary, Sun Pharmaceutical Industries, Inc., is located at 270 Prospect Plains Road, Cranbury, New Jersey, 08512.

2. Respondent Ranbaxy is a corporation organized, existing, and doing business under and by virtue of the laws of the Republic of India with its headquarters located at Plot No. 90, Sector 32, Gurgaon-122001 (Haryana), India. The headquarters for Ranbaxy’s U.S. subsidiary, Ranbaxy Inc., is located at 600 College Road East, Suite 2100, Princeton, New Jersey, 08540.

3. Respondent Daiichi Sankyo is a corporation organized, existing, and doing business under and by virtue of the laws of Japan with its headquarters located at 3-5-1, Nihonbashi-honcho, Chuo-ku, Tokyo, 103-8426, Japan. The headquarters for Daiichi Sankyo’s U.S. subsidiary, Daiichi Sankyo, Inc., is located at Two Hilton Court, Parsippany, New Jersey, 07054.

4. 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

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company 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

5. Pursuant to a Transaction Agreement and Scheme of Arrangement dated April 6, 2014, Sun proposes to acquire the voting securities of Ranbaxy in a transaction valued at approximately \$4 billion (the “Acquisition”). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKETS

6. 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 generic minocycline hydrochloride 50 mg, 75 mg, and 100 mg tablets (“minocycline tablets”).

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

IV. THE STRUCTURE OF THE MARKETS

8. Minocycline tablets are used to treat bacterial infections including pneumonia and other respiratory tract infections, acne, and other skin, genital, and urinary tract infections. Ranbaxy, Dr. Reddy’s Laboratories Ltd., and Par Pharmaceutical Companies, Inc. are currently the only U.S. suppliers of each dosage strength of minocycline tablets. Sun is one of a limited number of firms that has minocycline tablets in development and an ANDA under review by the U.S. Food and Drug Administration (“FDA”). Therefore, the Acquisition would likely increase concentration in the relevant markets substantially by reducing the number of future suppliers of minocycline tablets.

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V. ENTRY CONDITIONS

9. Entry into the relevant markets described in Paragraphs 6 and 7 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 be lengthy. In addition, no other entry is likely to occur such that it would be timely and sufficient to deter or counteract the competitive harm likely to result from the Acquisition.

VI. EFFECTS OF THE ACQUISITION

10. The effects of the Acquisition, if consummated, may be to substantially lessen competition in the markets for minocycline tablets in the United States 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, by eliminating future competition between Sun and Ranbaxy, thereby: (1) increasing the likelihood that the combined entity would forego or delay the launch of Sun's products in the markets; and (2) increasing the likelihood that the combined entity would delay, eliminate, or otherwise reduce the substantial additional price competition that would have resulted from Sun's independent entry into the markets.

VII. VIOLATIONS CHARGED

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

12. The Acquisition described in Paragraph 5, 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 thirtieth day of January, 2015, issues its Complaint against said Respondents.

By the Commission.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Sun Pharmaceutical Industries Ltd. (“Sun”) of the voting securities of Respondent Ranbaxy Laboratories Ltd. (“Ranbaxy”), a subsidiary of Daiichi Sankyo Co., Ltd. (“Daiichi Sankyo”), collectively “Respondents,” 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”):

1. Respondent Sun is a corporation organized, existing, and doing business under and by virtue of the laws of the Republic of India, with its headquarters located at

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Acme Plaza, Andheri Kurla Road, East Andheri, Mumbai 400 059, India. The headquarters for Sun's U.S. subsidiary, Sun Pharmaceutical Industries, Inc., is located at 270 Prospect Plains Road, Cranbury, New Jersey, 08512, USA.

2. Respondent Ranbaxy is a corporation organized, existing, and doing business under and by virtue of the laws of the Republic of India with its headquarters located at Plot No. 90, Sector 32, Gurgaon-122001 (Haryana), India. The headquarters for Ranbaxy's U.S. subsidiary, Ranbaxy Inc., is located at 600 College Road East, Suite 2100, Princeton, New Jersey, 08540, USA.
3. Respondent Daiichi Sankyo is a corporation organized, existing, and doing business under and by virtue of the laws of Japan with its headquarters located at 3-5-1, Nihonbashi-honcho, Chuo-ku, Tokyo 103-8426, Japan. The headquarters for Daiichi Sankyo's U.S. subsidiary, Daiichi Sankyo, Inc., is located at Two Hilton Court, Parsippany, New Jersey, 07054, USA.
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. "Sun" means: Sun Pharmaceutical Industries Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Sun Pharmaceutical Industries Ltd., and the respective directors, officers, employees, agents, representatives, successors, and assigns of

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each. After the Acquisition Date, Sun shall include Ranbaxy.

- B. “Ranbaxy” means: Ranbaxy Laboratories Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Ranbaxy Laboratories Ltd. (including, without limitation, Ohm Laboratories, Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Daiichi Sankyo” means: Daiichi Sankyo Co., Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Daiichi Sankyo Co., Ltd, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Respondents” means Sun, Ranbaxy and Daiichi Sankyo, individually and collectively. After the Acquisition Date, Respondents means Sun and Ranbaxy, 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, 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.

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- G. “Acquisition” means Respondent Sun’s acquisition of the voting securities of Ranbaxy. Respondents Sun and Ranbaxy entered a *Transaction Agreement and Scheme of Arrangement* on April 6, 2014, to effect the Acquisition that was submitted to the Commission.
- H. “Acquisition Date” means the date on which the Acquisition is consummated.
- I. “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 (“FDA”).
- J. “Application(s)” means all of the following: “New Drug Application” (“NDA”), “Abbreviated New Drug Application” (“ANDA”), “Supplemental New Drug Application” (“SNDA”), or “Marketing 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.
- K. “Business” means the research, Development, manufacture, commercialization, distribution, marketing, importation, advertisement and sale of a Product.

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- L. “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.
- M. “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.
- N. “Closing Date” means the date on which a Respondent (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey the Minocycline Product Assets to an Acquirer pursuant to this Order.
- O. “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 related to a Minocycline 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 Minocycline Products;
 2. information specifically excluded from the Minocycline Product Assets conveyed to the Acquirer;
 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 Minocycline Products or that is exclusively related to the Retained Products; and,
 4. information that is protected by the attorney work

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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.

- P. “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 Contract Manufacture Product on behalf of an Acquirer.
- Q. “Contract Manufacture Product(s)” means the Minocycline Products; *provided, however*, that, with the consent of the Acquirer, a Respondent may substitute a therapeutic equivalent (as that term is defined by the FDA) form of the Minocycline Products in performance of that Respondent’s agreement to Contract Manufacture.
- R. “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

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

- S. “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*, that, 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 Minocycline Product, “Direct Cost” means such cost as is provided in such Remedial Agreement for that Minocycline Product.
- T. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to Paragraph IV of this Order.
- U. “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. The term “Domain Name” *excludes* any trademark or service mark rights to such domain names other than the rights to the Product Trademarks required to be divested.
- V. “Drug Master Files” means the information submitted to the FDA as described in 21 C.F.R. Part 314.420 related to a Product.
- W. “Geographic Territory” shall mean the United States of America, including all of its territories and possessions, unless otherwise specified.
- X. “Government Entity” means any Federal, state, local

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or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.

- Y. “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 Minocycline 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; or (iv) the end of the last quarter following the Acquisition Date or the Closing Date.
- Z. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order or Paragraph III of the related Order to Maintain Assets.
- AA. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.
- BB. “Manufacturing Designee” means any Person other than a Respondent that has been designated by an Acquirer to manufacture a Minocycline Product for the Acquirer.
- CC. “Minocycline Products” means the following: the Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Ranbaxy pursuant to the following ANDAs:
1. ANDA No. A065156;
 2. ANDA No. A065062; and,
 3. any supplements, amendments, or revisions to

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those Applications.

DD. “Minocycline Product Assets” means all rights, title and interest in and to all assets related to the Business within the Geographic Territory of Respondent Ranbaxy related to each of the Minocycline Products, to the extent legally transferable, including, without limitation, the following assets and rights of Respondent Ranbaxy, as such assets and rights are in existence as of the date the Respondents sign the Agreement Containing Consent Orders in this matter and as are required to be maintained by the Respondents in accordance with the Asset Maintenance Order until the Closing Date:

1. all rights to all of the Applications related to the Minocycline Products;
2. all Product Intellectual Property related to the Minocycline Products that is not Product Licensed Intellectual Property;
3. all Product Approvals related to the Minocycline Products;
4. all Product Manufacturing Technology related to the Minocycline Products that is not Product Licensed Intellectual Property;
5. all Product Marketing Materials related to the Minocycline Products;
6. all Product Scientific and Regulatory Material related to the Minocycline Products;
7. all Website(s) owned, operated, or controlled by Respondent Ranbaxy related exclusively to the Minocycline Products;
8. the content related exclusively to the Minocycline Products that is displayed on any Website owned, operated, or controlled by Respondent Ranbaxy that is not dedicated exclusively to the Minocycline

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Products;

9. a list of all of the NDC Numbers related to the Minocycline Products, and rights, to the extent permitted by Law:
 - a. to require Respondents to discontinue the use of those NDC Numbers in the sale or marketing of the Minocycline Products *except* for returns, rebates, allowances, and adjustments for such Minocycline Product sold prior to the Closing Date and *except* as may be required by applicable Law and *except* as is necessary to give effect to the transactions contemplated under any applicable Remedial Agreement;
 - b. to prohibit Respondents 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 Minocycline Product sold prior to the Closing Date and *except* as may be required by applicable Law;
 - 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 Respondents of any such cross-referencing that is discovered by a Respondent);
 - d. to seek cross-referencing from a customer of the Respondents' NDC Numbers related to such Minocycline Product with the Acquirer's NDC Numbers related to such Minocycline Product;
 - e. to approve the timing of Respondents' discontinued use of those NDC Numbers in the sale or marketing of such Minocycline Product

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except for returns, rebates, allowances, and adjustments for such Minocycline Product sold prior to the Closing Date and *except* as may be required by applicable Law and *except* as is necessary to give effect to the transactions contemplated under any applicable Remedial Agreement; and,

- f. to approve any notification(s) from Respondents to any customer(s) regarding the use or discontinued use of such NDC numbers by the Respondents prior to such notification(s) being disseminated to the customer(s);
- 10. all Product Development Reports related to the Minocycline Products;
 - 11. at the option of the Acquirer of the Minocycline Products, all Product Assumed Contracts related to the Minocycline Products (copies to be provided to the Acquirer on or before the Closing Date);
 - 12. all patient registries related to the Minocycline Products, and any other systematic active post-marketing surveillance program to collect patient data, laboratory data and identification information required to be maintained by the FDA to facilitate the investigation of adverse effects related to the Minocycline Products (including, without limitation, any Risk Evaluation Mitigation Strategy as defined by the FDA);
 - 13. a list of all customers and targeted customers for the Minocycline Products and a listing of the net sales (in either units or dollars) of the Minocycline Products 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

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Minocycline Products on behalf of the High Volume Account and his or her business contact information;

14. for each Minocycline 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 Minocycline Products 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 and finished goods related to the Minocycline Products;

16. copies of all unfilled customer purchase orders for the Minocycline Products as of the Closing Date, to be provided to the Acquirer of the Minocycline Products not later than five (5) days after the Closing Date;

17. at the option of the Acquirer of the Minocycline Products, all unfilled customer purchase orders for the Minocycline Products; and,

18. all of Respondent Ranbaxy's books, records, and files directly related to the foregoing;

provided, however, that the term "Minocycline Product Assets" *excludes*: (i) documents relating to any 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 Minocycline Products; (ii) administrative, financial, and accounting records; (iii) quality control records that are

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determined not to be material to the manufacture of the Minocycline Products by the Interim Monitor or the Acquirer of the Minocycline Products; (iv) 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 Minocycline Products and to the Retained Products or Businesses of any Respondent and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Minocycline Products; or (ii) for which any Respondent has a legal obligation to retain the original copies, that 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 Minocycline Products, the Respondents shall provide the 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 Respondents provide the Acquirer with the above-described information without requiring a Respondent completely to divest itself of information that, in content, also relates to the Retained Products.

- EE. “Minocycline Product Core Employees” means the Product Research and Development Employees and the Product Manufacturing Employees related to each Minocycline Product.
- FF. “Minocycline Product Divestiture Agreements” means the following:
 - 1. *Asset Purchase Agreement* by and among, Ranbaxy Laboratories Limited, Sun Pharmaceutical Industries Limited and Torrent

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Pharma Inc., dated as of [insert];

2. *Supply Agreement* between Ohm Laboratories Inc. and Torrent Pharma Inc. to be executed on or before the Closing Date;
3. *Quality Agreement* between Ohm Laboratories Inc. and Torrent Pharma Inc. to be executed on or before the Closing Date; and,

all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Minocycline Product Assets that have been approved by the Commission to accomplish the requirements of this Order. The Minocycline Product Divestiture Agreements are contained in Non-Public Appendix I.

GG. “Minocycline Product License” means a perpetual, non-exclusive, fully paid-up and royalty-free license(s) under a Remedial Agreement 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 Respondent Ranbaxy:

1. to research and Develop the Minocycline 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 Minocycline Products within the Geographic Territory;
3. to import or export the Minocycline Products to or from the Geographic Territory to the extent related to the marketing, distribution or sale of the Minocycline Products in the Geographic Territory; and,
4. to have the Minocycline Products made anywhere in the world for distribution or sale within, or import into the Geographic Territory;

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provided, however, that, for any Product Licensed Intellectual Property that is the subject of a license from a Third Party entered into by Respondent Ranbaxy 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 Respondent Ranbaxy.

- HH. “Minocycline Product Releasee(s)” means the following Persons:
1. the Acquirer for the assets related to a particular Minocycline Product;
 2. any Person controlled by or under common control with the Acquirer; and,
 3. any Manufacturing Designees, licensees, sublicensees, manufacturers, suppliers, distributors, and customers of the Acquirer, or of such Acquirer-affiliated entities, in each such case, as related to the Minocycline Products.
- II. “NDC Number(s)” means the National Drug Code number, including both the labeler code assigned by the FDA and the additional numbers assigned by the labeler as a product code for a specific Product.
- JJ. “Orders” means this Decision and Order and the related Order to Maintain Assets.
- KK. “Order Date” means the date on which the final Decision and Order in this matter is issued by the Commission.
- LL. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- MM. “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

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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.

- NN. “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.
- OO. “Product(s)” means any pharmaceutical, biological, or genetic composition containing any formulation or dosage of a compound referenced as its pharmaceutically, biologically, or genetically active ingredient and/or that is the subject of an Application.
- PP. “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.
- QQ. “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 any Minocycline Product and pursuant to which any Third Party is

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obligated to purchase, or has the option to purchase without further negotiation of terms, any Minocycline 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 had or has as of the Closing Date the ability to independently purchase 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 any Minocycline Product;
3. relating to any Clinical Trials involving any Minocycline Product;
4. with universities or other research institutions for the use of any Minocycline Product in scientific research;
5. relating to the particularized marketing of any Minocycline Product or educational matters relating solely to any Minocycline Product(s);
6. pursuant to which a Third Party manufactures any Minocycline 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 any Minocycline Product on behalf of Respondent;
8. pursuant to which a Third Party provides the Product Manufacturing Technology related to the Minocycline Product to the Respondent;
9. pursuant to which a Third Party is licensed by the Respondent to use the Product Manufacturing Technology;

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10. constituting confidentiality agreements involving the Minocycline Product;
11. involving any royalty, licensing, covenant not to sue, or similar arrangement involving the Minocycline Product;
12. pursuant to which a Third Party provides any specialized services necessary to the research, Development, manufacture or distribution of the Minocycline Product to the Respondent 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 Minocycline Product or the Business related to such Minocycline 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 Minocycline Product, but concurrently may retain similar rights for the purposes of the Retained Product(s).

- RR. “Product Copyrights” means rights to all original works of authorship of any kind directly related to a Minocycline 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 Minocycline Product or of any materials used in the research, Development, manufacture, marketing or sale of that Minocycline Product, including all

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copyrights in raw data relating to Clinical Trials of that Minocycline 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 Minocycline Product's sales forecasting models, medical education materials, sales training 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) in connection with the acquisition of that Minocycline Product; 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 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.

SS. "Product Development Reports" means:

1. Pharmacokinetic study reports related to any Minocycline Product;
2. Bioavailability study reports (including reference listed drug information) related to any Minocycline Product;
3. Bioequivalence study reports (including reference listed drug information) related to any Minocycline

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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 any Minocycline Product;
5. annual and periodic reports related to the above-described Application(s), including any safety update reports;
6. FDA approved Product labeling related to any Minocycline Product;
7. currently used or planned product package inserts (including historical change of controls summaries) related to any Minocycline Product;
8. FDA approved patient circulars and information related to any Minocycline Product;
9. adverse event reports, adverse experience information, descriptions of material events and matters concerning safety or lack of efficacy related to any Minocycline Product;
10. summary of Product complaints from physicians related to any Minocycline Product;
11. summary of Product complaints from customers related to any Minocycline Product;
12. Product recall reports filed with the FDA related to any Minocycline 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 any Minocycline Product;
14. reports related to any Minocycline Product from any consultant or outside contractor engaged to

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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 any Minocycline Product that relate to the specifications, degradation, chemical interactions, testing and historical trends of the production of any Minocycline Product;
 16. analytical methods development records related to any Minocycline Product;
 17. manufacturing batch records related to any Minocycline Product;
 18. stability testing records related to any Minocycline Product;
 19. change in control history related to any Minocycline Product; and
 20. executed validation and qualification protocols and reports related to any Minocycline Product.
- TT. “Product Employee Information” means the following, for each Minocycline Product Core Employee, as and to the extent permitted by Law:
1. a complete and accurate list containing the name of each Minocycline Product Core Employee (including former employees who were employed by Respondent Ranbaxy 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;

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- b. job title or position held;
 - c. a specific description of the employee's responsibilities related to the Minocycline Product; *provided, however*, that, in lieu of this description, the Respondent Ranbaxy 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 Respondent Ranbaxy'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.
- UU. "Product Intellectual Property" means all of the following related to a Minocycline Product (other than Product Licensed Intellectual Property):
- 1. Patents;
 - 2. Product Copyrights;
 - 3. Product Trademarks;
 - 4. Product Trade Dress;
 - 5. trade secrets, know-how, techniques, data, inventions, practices, methods, and other

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confidential or proprietary technical, business, research, Development and other information; and,

6. rights to obtain and file for patents, trademarks, and copyrights and registrations related to any of the foregoing and to bring suit against a Third Party for the past, present or future infringement, misappropriation, dilution, misuse or other violations of any of the foregoing.

The term “Product Intellectual Property” *excludes* the corporate names or corporate trade dress of “Sun,” “Ranbaxy” or “Daiichi Sankyo” or the related corporate logos thereof, or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by any Respondent or the related corporate logos thereof, or general registered images or symbols by which Sun, Ranbaxy, or Daiichi Sankyo can be identified or defined.

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

1. Patents that are related to a Minocycline Product that the Respondent can demonstrate have been used, prior to the Acquisition Date, for any Retained Product that is the subject of an active (not discontinued) NDA or ANDA as of the Acquisition Date;
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 Minocycline Product and that the Respondent can demonstrate have been used, prior to the Acquisition Date, for any Retained Product that is the subject of an active (not discontinued) NDA or ANDA as of the Acquisition Date; and

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3. for any Minocycline Product that is the subject of an ANDA, 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 the therapeutic equivalent (as that term is defined by the FDA) of any Minocycline Product.

WW. “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 any Minocycline 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.

XX. “Product Manufacturing Technology” means all of the following related to a Minocycline 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

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the manufacture of that Product including the active pharmaceutical ingredient, excipients or packaging materials; and,

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.

YY. "Product Marketing Materials" means all marketing materials used specifically in the marketing or sale of any Minocycline 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 any Minocycline Product.

ZZ. "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 any Minocycline 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.

AAA. "Product Scientific and Regulatory Material" means

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all technological, scientific, chemical, biological, pharmacological, toxicological, regulatory and Clinical Trial materials and information.

- BBB. “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.
- CCC. “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.
- DDD. “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.
- EEE. “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

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Third Party to effect the assignment of assets or rights of that Respondent(s) related to a Minocycline 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 Minocycline 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.

FFF. "Retained Product" means any Product(s) other than a Minocycline Product.

GGG. "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 an FDA audit.

HHH. “Supply Cost” means a cost not to exceed the Respondent’s (as that Respondent is identified in the definition of the respective Minocycline Product) average direct per unit cost in United States dollars of manufacturing any Minocycline 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 Minocycline Product, the term “Supply Cost” means the cost as specified in such Remedial Agreement for that Minocycline Product.

III. “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 Minocycline Products who will be responsible for communicating directly with the Acquirer or its Manufacturing Designee, and the 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 any Minocycline Product that are acceptable to the Acquirer;

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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 any Minocycline Product in the quality and quantities achieved by the Respondent Ranbaxy, or the manufacturer and/or developer of such Minocycline Product;
 - b. obtain any Product Approvals necessary for the Acquirer or its Manufacturing Designee, to manufacture, distribute, market, and sell any Minocycline Product in commercial quantities and to meet all Agency-approved specifications for such Minocycline Product; and,
 - c. receive, integrate, and use all such Product Manufacturing Technology and all such intellectual property related to any Minocycline Product.
- JJJ. “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.
- KKK. “Torrent” means Torrent Pharma Inc., a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with a United States address located at 150 Allen Road, Suite 102, Basking Ridge, New Jersey 07920.
- LLL. “Website” means the content of the Website(s) located at the Domain Names, the Domain Names, and all

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copyrights in such Website(s), to the extent owned by a Respondent. The term “Website” *excludes* 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 Minocycline Products.

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

- A. Not later than ten (10) days after the Acquisition Date, Respondents shall divest the Minocycline Product Assets and grant the related Minocycline Product License, absolutely and in good faith, to Torrent pursuant to, and in accordance with, the Minocycline Product Divestiture 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 Torrent or to reduce any obligations of Respondents under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Minocycline Product Assets is incorporated by reference into this Order and made a part hereof;

provided, however, that, if Respondents have divested the Minocycline Product Assets to Torrent prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that Torrent is not an acceptable purchaser of the Minocycline Product Assets, then Respondents shall immediately rescind the transaction with Torrent, in whole or in part, as directed by the Commission, and shall divest the Minocycline 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

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receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

provided further, however, that, if Respondents have divested the Minocycline Product Assets to Torrent prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Minocycline Product Assets to Torrent (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. 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 required to be divested pursuant to this Order to an Acquirer, and to permit the Acquirer to continue the Business related to the Minocycline Products;

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

- C. Respondents shall:
1. submit to the Acquirer, at Respondents' expense, all Confidential Business Information;
 2. deliver all Confidential Business Information to the Acquirer:
 - a. in good faith;
 - b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the

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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 Acquirer, upon reasonable written notice and request, provide the 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 Minocycline Products that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;
4. not use, directly or indirectly, any such Confidential Business Information other than as necessary to comply with the following:
 - a. the requirements of this Order;
 - b. Respondents' obligations to the Acquirer under the terms of any applicable 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, (ii) other Persons specifically authorized by the 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 that is exclusively related to the marketing or sales of the Minocycline Products to the marketing or sales employees associated with the Business related to those Retained Products

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that are the therapeutic equivalent (as that term is defined by the FDA) of the Minocycline Products.

- D. Respondents shall provide, or cause to be provided to the 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 Minocycline Products; and,
 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 Minocycline Products.

Respondents 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 Minocycline Products. 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 the Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to the Acquirer.

- E. Respondents shall:
1. upon reasonable written notice and request from the Acquirer to Respondents, Contract Manufacture and deliver, or cause to be manufactured and delivered, to the requesting

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Acquirer, in a timely manner and under reasonable terms and conditions, a supply of each of the Contract Manufacture Products at Supply Cost, for a period of time sufficient to allow the Acquirer (or the Manufacturing Designee of the Acquirer) to obtain all of the relevant Product Approvals necessary to manufacture in commercial quantities, and in a manner consistent with cGMP, the finished drug product independently of Respondent Sun and Respondent Ranbaxy, and to secure sources of supply of the active pharmaceutical ingredients, excipients, other ingredients, and necessary components listed in Application(s) for the Minocycline Products from Persons other than Respondent Sun and Respondent Ranbaxy;

2. make representations and warranties to the 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

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be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by 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 Minocycline 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 Acquirer over manufacturing and supplying of Products for Respondents' own use or sale;
4. make representations and warranties to the 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 Minocycline Product, each such agreement may contain limits on a Respondent's aggregate liability for such a failure;

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5. during the term of any agreement to Contract Manufacture, upon written request of the Acquirer 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 directly 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 Manufacture, Respondents shall take all actions as are reasonably necessary to ensure an uninterrupted supply of the Contract Manufacture Product(s);
7. in the event Respondents become (i) unable to supply or produce a Contract Manufacture Product from the facility or facilities originally contemplated under a Remedial Agreement with an Acquirer and (ii) that Product is the subject of an ANDA, then Respondents shall provide a therapeutically equivalent (as that term is defined by the FDA) Product from another of Respondents' 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 the Acquirer (or the Manufacturing Designee of the Acquirer) to obtain all Product Approvals to manufacture the Contract

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Manufacture Products in the same quality achieved by, or on behalf of, the Respondent Ranbaxy and in commercial quantities, and in a manner consistent with cGMP, independently of Respondent Sun and Respondent Ranbaxy 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.E.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 the 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 Sun and Respondent Ranbaxy; (ii) the date the Acquirer of a particular Contract Manufacture Product notifies the Commission and Respondents 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 (5) years from the Closing Date.

- F. Respondents 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 Minocycline 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

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the FDA) of the Minocycline Products, in each case 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 as strictly confidential, including the nondisclosure of that information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).

- G. Not later than thirty (30) days after the Closing Date, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information by Respondents' 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. Respondents 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. Respondents shall maintain complete records of all such notifications at Respondents' 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. Respondents shall provide the Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.
- H. Respondents shall:
 - 1. for a period of six (6) months from the Closing Date or until the hiring of ten (10) Minocycline Product Core Employees by the Acquirer or its Manufacturing Designee, whichever occurs earlier, provide the Acquirer or its Manufacturing Designee with the opportunity to enter into employment contracts with the Minocycline Product Core Employees. Each of these periods is

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hereinafter referred to as the “Minocycline 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 the Acquirer or Proposed Acquirer(s) with the Product Employee Information related to the Minocycline Product Core Employees. Failure by Respondents to provide the Product Employee Information for any Minocycline Product Core Employee within the time provided herein shall extend the Minocycline Product Core Employee Access Period(s) with respect to that employee in an amount equal to the delay; *provided, however*, that the provision of such information may be conditioned upon the Acquirer’s or Proposed Acquirer’s written confirmation that it will (i) treat the information as confidential and, more specifically, (ii) use the information solely to consider whether to provide or continue providing to Minocycline Product Core Employees the opportunity to enter into employment contracts during a Minocycline Product Core Employee Access Period and not for any other purpose whatsoever, (iii) restrict access to the information to such of the Acquirer’s or Proposed Acquirer’s employees who need such access in connection with the specified and permitted use, and (iv) destroy or return the information without retaining copies at such time as the specified and permitted use ends;
3. during the Minocycline Product Core Employee Access Period(s), not interfere with the hiring or employing by the Acquirer or its Manufacturing Designee of the Minocycline Product Core Employees, and remove any impediments within the control of Respondents that may deter these employees from accepting employment with the

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Acquirer or its Manufacturing Designee, including, but not limited to, any noncompete or nondisclosure provision of employment with respect to a Minocycline Product or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Acquirer or its Manufacturing Designee. In addition, Respondents shall not make any counteroffer to such a Minocycline Product Core Employee who has received a written offer of employment from the 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 Minocycline 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 Minocycline Product Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, manufacture and/or market the Minocycline Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Minocycline Products, and to ensure successful execution of the pre-Acquisition plans for the Minocycline Products. 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 Minocycline 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

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Respondents to terminate the employment of any employee or to prevent Respondents from continuing to employ the Minocycline 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 Minocycline Product (“Minocycline Product Employee”) to terminate his or her employment relationship with the Acquirer or its Manufacturing Designee; or hire any Minocycline Product Employee;

provided, however, that Respondents may hire any former Minocycline 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 Minocycline Product Employees; or (ii) hire a Minocycline Product Employee who contacts any Respondent on his or her own initiative without any direct or indirect solicitation or encouragement from any Respondent.

- I. 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 Minocycline Product to the Acquirer,

1. Respondents shall take actions as are necessary to:

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- a. maintain the full economic viability and marketability of the Businesses related to that Minocycline 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 Minocycline Product;
 - d. ensure the assets related to each Minocycline Product are provided to the Acquirer in a manner without disruption, delay, or impairment of the regulatory approval processes related to the Business related to each Minocycline 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 related to that Minocycline Product.
- J. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against an Acquirer or the Minocycline Product Releasee(s) of the 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; and/or,
 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

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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 the Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the world of the Minocycline Products for the purposes of marketing, sale or offer for sale within the United States of America of such Minocycline Products; or (ii) the use within, import into, export from, or the supply, distribution, or sale within, the United States of America of the Minocycline Products. Each Respondent shall also covenant to the 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 the Acquirer or the related Minocycline Product Releasee(s) under such Patents, if the suit would have the potential directly to limit or interfere with the Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the world of the Minocycline Products for the purposes of marketing, sale or offer for sale within the United States of America of such Minocycline 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 the Minocycline Products. 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.

- K. Upon reasonable written notice and request from an Acquirer to Respondents, Respondents shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondents to assist the Acquirer to defend against, respond to, or otherwise participate in any litigation

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brought by a Third Party related to the Product Intellectual Property, if such litigation would have the potential to interfere with the Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the world of the Minocycline Products for the purposes of marketing, sale or offer for sale within the United States of America of such Minocycline Products; or (ii) the use within, import into, export from, or the supply, distribution, or sale within, the United States of America of the Minocycline Products.

- L. 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 Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Minocycline Products for the purposes of marketing, sale or offer for sale within the United States of America of such Minocycline 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 Minocycline Products, that Respondent shall:
1. cooperate with the 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 Minocycline Product;
 2. waive conflicts of interest, if any, to allow that Respondent's outside legal counsel to represent the Acquirer in any ongoing patent litigation related to that Minocycline Product; and/or,

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3. permit the transfer to the 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 Minocycline Product.
- M. The purpose of the divestiture of the Minocycline Product Assets and the provision of the related Product Manufacturing Technology (for the Contract Manufacture Products) 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 related to each Minocycline Product within the Geographic Territory;
 2. to create a viable and effective competitor that is independent of Respondent Sun and Respondent Ranbaxy in the Business related to each Minocycline 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 Respondents

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have 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 Respondents 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, Respondents 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 Minocycline 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 Minocycline Product, until the earliest of: (i)

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the date the Acquirer (or the Acquirer's Manufacturing Designee(s)) is approved by the FDA to manufacture and sell that Minocycline Product and able to manufacture that Minocycline Product in commercial quantities, in a manner consistent with cGMP, independently of Respondent Sun and Respondent Ranbaxy; (ii) the date the Acquirer notifies the Commission and Respondents of its intention to abandon its efforts to manufacture that Minocycline Product; or (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 has abandoned its efforts to manufacture that Minocycline Product;

provided, however, that, the Interim Monitor's service shall not exceed five (5) years from the Order Date *unless* the Commission decides to 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

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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.
- 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 the 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,* that, beginning one hundred twenty (120) days after Respondents have filed their final report pursuant to Paragraph VII.B., and one hundred twenty (120) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by the Acquirer toward obtaining FDA approval to manufacture each Minocycline Product and obtaining the ability to manufacture each Minocycline Product in commercial quantities, in a manner consistent with cGMP, independently of Respondent Sun and

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Respondent Ranbaxy.

- 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.

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 Minocycline Product Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign,

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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 Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph,

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Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by 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*, that 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, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the

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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*, that, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such Person within five (5) days after receiving notification of the Commission's approval.

The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the

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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.

5. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
6. 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.
7. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
8. 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.

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- 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 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 redacted documents or 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

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in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the Minocycline Products or the assets and Businesses associated with those Minocycline 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 Acquirer (but shall not be deemed to have violated this requirement if the 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:

- 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 Minocycline 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 Minocycline Product that is a Contract Manufacture Product, Respondents shall include in the Remedial Agreement(s) related to that Minocycline

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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 Minocycline Product, as applicable, and to have any such manufacture to be independent of the Respondent Sun and Respondent Ranbaxy, 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 Minocycline 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 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, Respondents 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 (i) every sixty (60) days thereafter until Respondents have fully complied with Paragraphs II.A., II.B., II.C.1. – II.C.3, II.D., II.G. II.H. and II.I., and (ii) every one hundred twenty (120) days thereafter until

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Respondents have fully complied with Paragraph II.E., Respondents 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. Respondents 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. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with 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 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 other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which 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

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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 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 March 18, 2025.

By the Commission.

Decision and Order

**NON-PUBLIC APPENDIX I
AGREEMENTS RELATED TO THE DIVESTITURES**

**[Redacted from the Public Record, but Incorporated by
Reference]**

Order to Maintain Assets

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Sun Pharmaceutical Industries Ltd. (“Sun”) of the voting securities of Respondent Ranbaxy Laboratories Ltd. (“Ranbaxy”), a subsidiary of Daiichi Sankyo Co., Ltd. (“Daiichi Sankyo”), collectively “Respondents,” 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 Sun is a corporation organized, existing, and doing business under and by virtue of the laws of the Republic of India, with its headquarters located at Acme Plaza, Andheri Kurla Road, East Andheri, Mumbai 400 059, India. The headquarters for Sun’s U.S. subsidiary, Sun Pharmaceutical Industries, Inc., is

Order to Maintain Assets

located at 270 Prospect Plains Road, Cranbury, New Jersey, 08512, USA.

2. Respondent Ranbaxy is a corporation organized, existing, and doing business under and by virtue of the laws of the Republic of India with its headquarters located at Plot No. 90, Sector 32, Gurgaon-122001 (Haryana), India. The headquarters for Ranbaxy's U.S. subsidiary, Ranbaxy Inc., is located at 600 College Road East, Suite 2100, Princeton, New Jersey, 08540, USA.
3. Respondent Daiichi Sankyo is a corporation organized, existing, and doing business under and by virtue of the laws of Japan with its headquarters located at 3-5-1, Nihonbashi-honcho, Chuo-ku, Tokyo 103-8426, Japan. The headquarters for Daiichi Sankyo's U.S. subsidiary, Daiichi Sankyo, Inc., is located at Two Hilton Court, Parsippany, New Jersey, 07054, USA.
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. "Sun" means: Sun Pharmaceutical Industries Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Sun Pharmaceutical Industries Ltd., and the respective directors, officers, employees, agents, representatives, successors, and assigns of

Order to Maintain Assets

each. After the Acquisition Date, Sun shall include Ranbaxy.

- B. “Ranbaxy” means: Ranbaxy Laboratories Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Ranbaxy Laboratories Ltd. (including, without limitation, Ohm Laboratories, Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Daiichi Sankyo” means: Daiichi Sankyo Co., Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Daiichi Sankyo Co., Ltd., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Respondents” means Sun, Ranbaxy and Daiichi Sankyo, individually and collectively. After the Acquisition Date, Respondents means Sun and Ranbaxy, 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
 - 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. “Minocycline Product Business(es)” means the Business of Respondents within the Geographic

Order to Maintain Assets

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

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with past practice (including regular repair and maintenance of the assets of such business) and/or as may be necessary to preserve the full economic marketability, viability, and competitiveness of such Minocycline Product Businesses and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; High Volume Accounts; end-use customers; Agencies; employees; and others having business relations with each of the respective Minocycline Product Businesses. Respondents' responsibilities shall include, but are not limited to, the following:

1. providing each of the respective Minocycline 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 Minocycline Product Business;
2. continuing, at least at their scheduled pace, any additional expenditures for each of the respective Minocycline 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 Minocycline Products and/or to prevent any diminution in sales of each of the Minocycline Products during and after the Acquisition process and prior to the complete transfer and delivery of the related Minocycline Product Assets to an Acquirer;
4. providing such resources as may be necessary to maintain the competitive strength and positioning of each of the Minocycline Products that were

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marketed or sold by Respondents prior to April 6, 2014, at the related High Volume Accounts;

5. making available for use by each of the respective Minocycline 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 Minocycline Product Business; and
 6. providing such support services to each of the respective Minocycline Product Businesses as were being provided to such Minocycline Product Business by Respondents as of the date the Consent Agreement was signed by Respondents.
- C. Until Respondents fully transfer and deliver each of the respective Minocycline Product Assets to an Acquirer, Respondents shall maintain a work force that is (i) at least as large in size (as measured in full time equivalents) as, and (ii) comparable in training, and expertise to, what has been associated with the Minocycline Products for the relevant Minocycline Product's last fiscal year.
- D. Respondents shall:
1. for a period of six (6) months from the Closing Date or until the hiring of ten (10) Minocycline Product Core Employees by the Acquirer or its Manufacturing Designee, whichever occurs earlier, provide the Acquirer or its Manufacturing Designee with the opportunity to enter into employment contracts with the Minocycline Product Core Employees related to the Minocycline Products and assets acquired by the Acquirer. Each of these periods is hereinafter referred to as the "Minocycline 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

Order to Maintain Assets

Commission to Respondents to provide the Product Employee Information; or (ii) ten (10) days after written request by an Acquirer, provide the Acquirer or Proposed Acquirer(s) with the Product Employee Information related to the Minocycline Product Core Employees. Failure by Respondents to provide the Product Employee Information for any Minocycline Product Core Employee within the time provided herein shall extend the Minocycline Product Core Employee Access Period(s) with respect to that employee in an amount equal to the delay; *provided, however*, that the provision of such information may be conditioned upon the Acquirer's or Proposed Acquirer's written confirmation that it will (i) treat the information as confidential and, more specifically, (ii) use the information solely to consider whether to provide or continue providing to Minocycline Product Core Employees the opportunity to enter into employment contracts during a Minocycline Product Core Employee Access Period and not for any other purpose whatsoever, (iii) restrict access to the information to such of the Acquirer's or Proposed Acquirer's employees who need such access in connection with the specified and permitted use, and (iv) destroy or return the information without retaining copies at such time as the specified and permitted use ends;

3. during the Minocycline Product Core Employee Access Period(s), not interfere with the hiring or employing by the Acquirer or its Manufacturing Designee of the Minocycline Product Core Employees related to the Minocycline Products and assets acquired by the Acquirer, and remove any impediments within the control of Respondents that may deter these employees from accepting employment with the Acquirer or its Manufacturing Designee, including, but not limited to, any noncompete or nondisclosure provision of employment with respect to a Minocycline Product

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or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Acquirer or its Manufacturing Designee. In addition, Respondents shall not make any counteroffer to such a Minocycline Product Core Employee who has received a written offer of employment from the 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 Minocycline 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 Minocycline Product Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, manufacture and/or market the Minocycline Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Minocycline Products and to ensure successful execution of the pre-Acquisition plans for the Minocycline Products. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents until the Closing Date(s) has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law); 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 Minocycline Product ("Minocycline Product Employee") to terminate his or her employment relationship with the

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Acquirer or its Manufacturing Designee; or hire any Minocycline Product Employee;

provided, however, that Respondents may hire any former Minocycline 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 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 Minocycline Product Core Employees in connection with the Acquisition;

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 Minocycline Product Employees; or (ii) hire a Minocycline Product Employee who contacts any Respondent on his or her own initiative without any direct or indirect solicitation or encouragement from any Respondent.

- E. Pending divestiture of the Minocycline Product Assets, Respondents shall:
1. not use, directly or indirectly, any Confidential Business Information other than as necessary to comply with the following:
 - a. the requirements of this Order;
 - b. Respondents' obligations to the 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, (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 that is exclusively related to the marketing or sales of the Minocycline 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 Minocycline 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.
- F. 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 shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information by Respondents' 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.

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- G. Respondents 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. Respondents shall maintain complete records of all such notifications at Respondents' 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. Respondents shall provide the Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.
- H. Respondents shall monitor the implementation by its employees and other personnel of all applicable restrictions with respect to Confidential Business Information, 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.
- I. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Minocycline 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 Minocycline Product Businesses within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Minocycline Product Assets except for ordinary wear and tear.

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

- 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

Order to Maintain Assets

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 Respondents have 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 Respondents 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, Respondents 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.
 - 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.

Order to Maintain Assets

3. The Interim Monitor shall serve until the date of completion by the Respondents of the divestiture of all Minocycline 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 Minocycline Product, until the earliest of: (i) the date the Acquirer (or the Acquirer's Manufacturing Designee(s)) is approved by the FDA to manufacture that Minocycline Product and able to manufacture that Minocycline Product in commercial quantities, in a manner consistent with cGMP, independently of the Respondents; (ii) the date the Acquirer notifies the Commission and Respondents of its intention to abandon its efforts to manufacture that Minocycline 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 has abandoned its efforts to manufacture that Minocycline Product;

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

Order to Maintain Assets

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.
- 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 the 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*, that, beginning one hundred twenty (120) days after Respondents have filed their final report pursuant to Paragraph VII.B. of the Decision and

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Order, and one hundred twenty (120) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by the Acquirer toward obtaining FDA approval to manufacture each Minocycline Product and obtaining the ability to manufacture each Minocycline 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 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.

Order to Maintain Assets

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 this Order to Maintain Assets and the Paragraphs that are enumerated in Paragraph VII.B. 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 Acquirer, and (iii) the agreement(s) to Contract Manufacture; and
- 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 Respondent 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;

Order to Maintain Assets

- 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 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

Order to Maintain Assets

provisions of Commission Rule 2.34, 16 C.F.R. § 2.34;
or

- B. the day after the divestiture of all of the Minocycline 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, 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.

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Sun Pharmaceutical Industries Ltd. (“Sun”) that is designed to remedy the anticompetitive effects resulting from Sun’s acquisition of Ranbaxy Laboratories Ltd. (“Ranbaxy”) from Daiichi Sankyo Co., Ltd. (“Daiichi Sankyo”). Under the terms of the proposed Consent Agreement, the parties are required to divest all of Ranbaxy’s rights and assets to generic minocycline hydrochloride 50 mg, 75 mg, and 100 mg tablets (“minocycline tablets”) to Torrent Pharmaceuticals Ltd. (“Torrent”).

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, to make a final decision as to whether it should withdraw from the proposed Consent Agreement or make final the Decision and Order (“Order”).

Pursuant to an agreement dated April 6, 2014, Sun plans to acquire Ranbaxy in an all-stock deal valued at approximately \$4 billion (the “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 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening future competition in the markets for each dosage strength of generic minocycline tablets in the United States. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that would otherwise be eliminated by the Proposed Acquisition.

I. The Product and Structure of the Markets

The Proposed Acquisition would reduce the number of future suppliers in the markets for generic minocycline tablets, which physicians prescribe to treat bacterial infections including

Analysis to Aid Public Comment

pneumonia and other respiratory tract infections, acne, and other skin, genital, and urinary tract infections. Pharmaceutical companies usually launch generic versions of drugs after a branded product loses its patent protection. When only one generic product is available, the price for the branded product acts as a ceiling above which the generic manufacturer cannot price its product. During this period, the branded product competes directly with the generic. 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, generic suppliers compete only against each other. In generic pharmaceutical product markets, price generally decreases as the number of generic competitors increases. The United States is the relevant geographic market for generic drugs because the U.S. Food and Drug Administration (“FDA”) must approve them for sale within the United States.

There are currently only three suppliers of each dosage strength of generic minocycline tablets in the United States: Ranbaxy, Dr. Reddy’s Laboratories Ltd., and Par Pharmaceutical Companies, Inc. Sun is one of only a limited number of firms likely to enter the generic minocycline tablets markets in the near future. Sun’s acquisition of Ranbaxy would therefore deprive consumers of the increased competition and likely price reductions that would have occurred as a result of Sun’s independent entry.

II. Entry

Entry into the markets for generic minocycline tablets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Proposed Acquisition. The combination of drug development times and regulatory requirements, including approval by the FDA, is costly and lengthy.

Analysis to Aid Public Comment

III. Effects

The Proposed Acquisition likely would cause significant anticompetitive harm to consumers by eliminating future competition that would otherwise have occurred when Sun's generic minocycline tablets entered the markets. Market participants characterize generic minocycline tablets as commodities, and each market as one in which the number of generic suppliers has a direct impact on pricing. Customers and competitors have confirmed that the price of generic pharmaceutical products decreases with new entry even after several other suppliers have entered the market. Further, customers generally believe that having at least four suppliers in each generic pharmaceutical market produces more competitive prices than if fewer suppliers are available to them.

The Proposed Acquisition would eliminate significant future competition between Sun and Ranbaxy. The evidence shows that anticompetitive effects are likely to result from the Proposed Acquisition due to the elimination of an additional independent competitor in the markets for generic minocycline tablets, which would have allowed customers to negotiate lower prices. Thus, absent a remedy, the Proposed Acquisition will likely cause U.S. consumers to pay significantly higher prices for generic minocycline tablets.

IV. The Consent Agreement

The proposed Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in the relevant markets. Pursuant to the Consent Agreement and the Order, the parties are required to divest all of Ranbaxy's rights and assets to generic minocycline tablets to Torrent. The parties must accomplish these divestitures and relinquish their rights no later than ten days after the Proposed Acquisition is consummated.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the Proposed Acquisition. If the Commission determines that Torrent is not an acceptable acquirer, or that the manner of the divestitures is not acceptable, the proposed Order requires the parties to unwind the sale of rights to Torrent and

Analysis to Aid Public Comment

then divest the products to a Commission-approved acquirer within six months of the date the Order becomes final. The proposed Order further allows the Commission to appoint a trustee in the event the parties fail to divest the products as required.

The proposed Consent Agreement and Order contain several provisions to help ensure that the divestitures are successful. The Order requires that Ranbaxy transfer to Torrent all confidential business information and requires that Sun and Ranbaxy take all actions that are necessary to maintain the full viability and marketing of the generic minocycline tablets until Torrent commences the distribution, marketing, and sale of the products.

The proposed Order also requires the parties to divest Ranbaxy's generic minocycline hydrochloride 50 mg, 75 mg, and 100 mg capsules ("minocycline capsules") to Torrent to ensure that Torrent achieves regulatory approval to qualify a new API supplier for its minocycline tablets as quickly as Ranbaxy would have. Torrent will be able to establish the current API supplier of the minocycline capsules as the API supplier for its minocycline tablets through a less time-intensive regulatory process if Torrent controls both products and uses the same API supplier for both. Moreover, the proposed Order requires Sun and Ranbaxy to manufacture and supply generic minocycline tablets and capsules to Torrent following the divestiture to allow Torrent to enter the markets while it validates its manufacturing process and seeks the necessary FDA approvals.

The Commission will appoint Frank Civile to act as an interim monitor to assure that Sun and Ranbaxy expeditiously comply with all of their obligations and perform all of their responsibilities pursuant to the Consent Agreement. In order to ensure that the Commission remains informed about the status of the transfer of rights and assets, the Consent Agreement requires Sun and Ranbaxy to file reports with the interim monitor who will report in writing to the Commission concerning performance by the parties of their obligations under the Consent Agreement.

Analysis to Aid Public Comment

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.

Complaint

IN THE MATTER OF

**SONY COMPUTER ENTERTAINMENT
AMERICA LLC**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4514; File No. 122 3252
Complaint, March 24, 2015 – Decision, March 24, 2015*

This consent order addresses Sony's false advertising claims about the "game changing" technological features of its PlayStation Vita handheld gaming console during its U.S. launch campaign in late 2011 and early 2012. According to the complaint, Sony advertised several notable features of the PS Vita. First, it promoted the "remote play" feature of the PS Vita as a way that consumers could access games already residing on their PS3 consoles and play them remotely on the PS Vita anywhere with a Wi-Fi connection. Second, its advertisements represented that, with the "cross platform gaming" or "cross save" feature, consumers could begin playing a game on a PS3 console, save their progress at any point in the game, and then continue that game where they left off on the PS Vita. Third, with the "3G version" of the PS Vita, available for an extra \$50 and monthly fees, Sony represented that consumers could access a 3G network to play games live with others. The complaint alleges that Sony's representations regarding these features were false or misleading and thus violated Section 5 of the FTC Act. Under the consent order, Sony is barred from making misleading advertising claims about the features or attributes of its handheld gaming consoles in the future. Sony must also provide consumers who bought a PS Vita gaming console before June 1, 2012, either a \$25 cash or credit refund or a \$50 merchandise voucher for select video games and/or services.

Participants

For the *Commission*: Linda K. Badger and Matthew D. Gold.

For the *Respondent*: Stuart Friedel, C. Andrew Keisner, and Ronald Urbach, Davis & Gilbert LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Sony Computer Entertainment America LLC, a limited liability company ("Respondent" or "SCEA"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges: