

Interlocutory Orders, Etc,

IN THE MATTER OF

**PFIZER INC.,
AND
WYETH**

Docket No. C-4267. Order, April 4, 2016

Order granting the Petition of Respondent Pfizer Inc. to Reopen and Modify Decision and Order for the limited purpose of setting aside the Order as to Pfizer, and continuing as to its successor, Zoetis.

ORDER REOPENING AND MODIFYING ORDER

Pfizer Inc. (“Pfizer”) filed a Petition of Respondent Pfizer Inc. to Reopen and Modify Decision and Order (“Petition”) on December 8, 2015. Pfizer is a Respondent to the consent order issued by the Commission in *Pfizer Inc. et al.*, Docket No. C-4267 (“Order”), which required Pfizer to divest certain animal health assets and imposed related remedial obligations. Since the divestiture, Pfizer has transferred its animal health business, and all related assets and liabilities, to Zoetis Inc. (“Zoetis”), and Zoetis has expressly agreed to be bound to the Order. Pfizer now asks that this proceeding be reopened for the limited purpose of setting aside the Order as to Pfizer, and continuing as to its successor, Zoetis. Pfizer’s Petition was available for public comment for thirty days until January 22, 2016 and no public comments were filed. For the reasons stated below, the Commission has determined to grant Pfizer’s Petition and reopen and modify the Order as requested.

BACKGROUND

The Commission issued the Order on January 25, 2010, to resolve concerns regarding the competitive impact of Pfizer’s 2009 acquisition of Wyeth. At the time, Pfizer and Wyeth were both involved in human health and animal health businesses. The proposed combination of Pfizer and Wyeth created competitive concerns in a number of animal health markets, but it did not raise concerns regarding human health markets. To resolve these concerns, the Order required Pfizer to divest a substantial number of animal health products and related assets to Boehringer

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Ingelheim Vetmedica Inc. (“BIVI”), and certain equine anthelmintic product assets to Virbac Corporation. The Order also imposes a number of continuing obligations to support the divestitures and the remedial purposes of the Order. These obligations include maintaining the confidentiality of information regarding the divested assets, providing assistance to respond to litigation regarding Product Intellectual Property (as defined in the Order), and filing annual compliance reports. Pfizer has completed the required divestitures but remains subject to the continuing obligations until the Order terminates on January 25, 2020.

PFIZER’S PETITION

Pfizer requests that the Order be set aside as to Pfizer because it no longer owns or controls the animal health assets and business that are relevant to the Order’s continuing obligations. On January 28, 2013, Pfizer and Zoetis entered into a Contribution Agreement, and on February 6, 2013, the parties entered into a Global Separation Agreement. Through these agreements, Pfizer transferred all of its animal health assets and liabilities to Zoetis.¹ Pfizer continued to retain an interest in Zoetis until June 24, 2013, when Pfizer completed a stock exchange offer and divested itself of all interest in Zoetis.² Through these transactions, Pfizer exited the animal health business and Zoetis became a successor to Pfizer under the Order.

Zoetis recognizes its obligations under the Order and has acted as a successor since acquiring Pfizer’s animal health business.³ Since Zoetis acquired Pfizer’s animal health assets, it has assumed responsibility for complying with the Order and has filed all required compliance reports jointly with Pfizer. Further, Zoetis, Pfizer and BIVI have agreed that if the Commission grants Pfizer’s petition, Pfizer will assign to Zoetis the divestiture

1 Petition at page 4.

2 *Id.*

3 Petition at page 5.

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agreements Pfizer and BIVI entered pursuant to this Order.⁴ Finally, Pfizer represents that it has no plans or present intention to reacquire the assets transferred to Zoetis or to reenter the animal health business.⁵

STANDARD FOR REOPENING AND MODIFYING A FINAL ORDER

Pfizer's Petition was filed pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b). Section 5(b) provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require.⁶ A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that these changes eliminate the need for the order or make continued application of it inequitable or harmful to competition.⁷ Section 5(b) also provides that the Commission may reopen and modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification.⁸

4 *Id.* Pfizer has also requested Commission approval to assign the Order's Remedial Agreements regarding BIVI to Zoetis. Petition at page 1.

5 Petition at page 5.

6 *See also Supplementary Information*, Amendment to the Commission's Rules of Practice § 2.51(b), 16 C.F.R. 2.51(b) (August 15, 2001).

7 S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) ("Hart Letter"). *See also United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the Order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

8 Hart Letter at 5; 16 C.F.R. § 2.51.

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In all instances, whether the request is based on changed conditions or on public interest grounds, respondents' showing must be supported by evidence that is credible and reliable. Commission Rule 2.51(b) requires a "satisfactory showing" to include affidavits setting forth admissible facts, and that all information and material that the requester wishes the Commission to consider be contained in the request at the time of filing.⁹

If, after determining that the requester has made the required showing, the Commission decides to reopen the order, the Commission will then consider and balance all of the reasons for and against modification. In no instance does a decision to reopen an order oblige the Commission to modify it,¹⁰ and the burden remains on the requester in all cases to demonstrate why the order should be reopened and modified. The petitioner's burden is not a light one in view of the public interest in repose and the finality of the Commission's orders.¹¹

THE ORDER WILL BE REOPENED AND MODIFIED

Pfizer has made the requisite showing that changed conditions and the public interest support setting aside the Order as to Pfizer. Pfizer's exit from the animal health business and its spin-off of its animal health assets and liabilities to Zoetis is a material change of fact. Zoetis is a successor to Pfizer under the Order and is in the best position to fulfill the continuing obligations of the Order. Further, Zoetis has acknowledged and complied with the continuing obligations under the Order since acquiring Pfizer's animal health assets. Pfizer has no interest in Zoetis or in any animal health business and, as such, does not have the interest or ability to interfere with the remedial purposes of the Order. Neither the interests of the Commission nor the public interest require Pfizer to remain subject to the Order. Further, setting

9 16 C.F.R. § 2.51 (b).

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

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

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aside the Order as to Pfizer is consistent with past Commission rulings on similar petitions.¹²

Accordingly,

IT IS ORDERED that the Order in Docket No. C-4267 be, and it hereby is, reopened; and

IT IS FURTHER ORDERED that the Order be, and it hereby is, set aside as to Pfizer Inc. but not as to Pfizer Inc.'s successor, Zoetis Inc., and, consistent therewith, the assignment to Zoetis Inc. of the Order's Remedial Agreements regarding BIVI is hereby approved.

By the Commission.

12 See, e.g., *Duke Energy Corp., et al.*, Docket No. C-3932, Order Reopening and Modifying Order (Sept. 26, 2007) (order set aside as to Duke Energy after sale of assets in the relevant business to Spectra Energy); see also *AEA Investors 2006 Fund L.P., et al.*, Docket No. C-4297, Order Reopening and Modifying Final Order (Apr. 30, 2013); *Koninklijke Ahold, N.V.*, Docket No. C-4027, Order Reopening and Modifying Order (July 10, 2007) and Order Reopening and Modifying Order (July 21, 2006); *Entergy Corporation, et al.*, Docket No. C-3998, Order Reopening and Setting Aside Order (July 1, 2005).

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IN THE MATTER OF

**CABELL HUNTINGTON HOSPITAL, INC.,
PALLOTTINE HEALTH SERVICES, INC.,
AND
ST. MARY’S MEDICAL CENTER, INC.**

Docket No. 9366. Order, April 22, 2016

Order extending the withdrawal of this matter from adjudication until a short time after the WVHCA determines whether to approve or deny Cabell’s application for approval.

ORDER EXTENDING WITHDRAWAL FROM ADJUDICATION

On November 5, 2015, the Commission issued an administrative complaint challenging Cabell Huntington Hospital’s proposed acquisition of St. Mary’s Medical Center. On March 24, 2016, the Commission issued an Order withdrawing this matter from adjudication, and staying all proceedings before the Administrative Law Judge, until April 25, 2016. We found good cause to take these steps in order to evaluate the impact, if any, of a newly enacted West Virginia statute, which empowers the West Virginia Health Care Authority (“WVHCA”) to prospectively review and approve or disapprove certain “cooperative agreements” between hospitals.¹

On March 22, 2016, the WVHCA informed Cabell that it would have to secure WVHCA approval before consummating the proposed acquisition, and Cabell filed the requisite application on March 25, 2016. On April 18, 2016, Complaint Counsel and Respondents filed a Joint Motion to extend the withdrawal of this matter from adjudication and continue the current stay of proceedings until 14 days after the WVHCA “issues its written decision” regarding Cabell’s application.² As a condition of their

¹ See W. Va. Code § 16-29B-28 (a)(2).

² Joint Motion at 1.