

Complaint

IN THE MATTER OF

**DANAHER CORPORATION
AND
GENERAL ELECTRIC COMPANY**

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

*Docket No. C-4710; File No. 191 0082
Complaint, March 19, 2020 – Decision, March 19, 2020*

This consent order addresses the \$21.4 billion acquisition by Respondent Danaher Corporation of certain assets of Respondent General Electric Company's Biopharma business that would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint alleges that the Acquisition may be to substantially lessen competition in microcarrier beads, conventional low-pressure liquid chromatography ("LPLC") columns, conventional LPLC skids, single-use LPLC, chromatography resins, LPLC continuous chromatography systems, and single-use tangential flow filtration ("TFF") systems. The consent order requires Respondents operate the hold separate businesses as independent, ongoing, economically viable businesses and take no action to integrate the operations of the hold separate businesses with other Danaher businesses.

Participants

For the *Commission*: William Cooke and Lisa DeMarchi Sleigh.

For the *Respondents*: Leon Greenfield, Lauren Ige, Perry Lange, Gannam Rifkahn, and Hartmut Schneider, WilmerHale; Deb Garza, Anne Lee, and Kavita Pillai, Covington & Burlington LLP; Sharis Pozen, Clifford Chance LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Danaher Corporation ("Danaher"), a company subject to the jurisdiction of the Commission, has made an offer to acquire the Biopharma business of GE Healthcare Life Sciences ("GE Biopharma"), a division of General Electric Company ("GE"), a company subject to the jurisdiction of the Commission, 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 Danaher is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its executive and principal offices located at 2200 Pennsylvania Avenue, NW, Suite 800W, Washington, D.C. 20037. Danaher is engaged

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in the development, manufacture, sale, and distribution of equipment used in several industries including life sciences, diagnostics, and environmental and applied solutions.

2. Respondent GE is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New York, with its headquarters located at 41 Farnsworth Street, Boston, Massachusetts 02210. GE Biopharma is engaged in the development, manufacture, sale, and distribution of instruments, consumables, and software that support the research, discovery, process development, and manufacturing workflows of biopharmaceutical drugs.

3. 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 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

4. Pursuant to an Equity and Asset Purchase Agreement dated February 25, 2019, Respondent Danaher proposed to acquire the GE Biopharma business of Respondent GE in a transaction valued at approximately \$21.4 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

5. The relevant lines of commerce in which to analyze the effects of the Acquisition are (1) the research, development, manufacture, marketing, distribution, and sale of the following products, which are used to support the research, discovery, process development, and manufacturing workflows of biopharmaceutical drugs: (a) microcarrier beads; (b) conventional low-pressure liquid chromatography (“LPLC”) columns; (c) conventional LPLC skids; (d) single-use LPLC; (e) chromatography resins; (f) LPLC continuous chromatography systems; and (g) single-use tangential flow filtration (“TFF”) systems, and (2) the research, development, manufacture, marketing, distribution, and sale of label-free molecular characterization instruments.

- a. Microcarrier beads are used in cell culture bioprocessing. They provide a surface for the anchorage of dependent cells to attach and grow in cell culture vessels and bioreactors;
- b. LPLC columns separate wanted from unwanted molecules by using a liquid or gaseous phase to carry the cell mass through an adsorbent serving as a stationary phase. Conventional LPLC columns are containers that hold chromatography resins used as the adsorbent during the stationary phase. Columns are made of glass, stainless steel, acrylic glass, or plastic;
- c. Conventional LPLC skids control the flow of liquid in the chromatography process. Conventional LPLC skids contain a system of pumps, valves,

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sensors, tubing, electronic components, software, and flow paths composed of multi-use components;

- d. Single-use LPLC skids control the flow of liquid in the chromatography process and have the same function as conventional LPLC skids except that the flow path is composed of single-use components;
- e. Chromatography resins are chemically treated consumables that constitute the stationary phase of the LPLC process. Each resin type differs in its chemical characteristics and features so each is used for specific purification and production steps and the processing of particular molecules;
 - i. Affinity resins include resins that utilize specific binding interactions between a ligand that is immobilized to a resin and its binding partner but does not include protein A;
 - ii. Ion exchange resins include resins that separate molecules based on their total charge; and
 - iii. Mixed mode resins include resins that utilize matrices that have been functionalized with ligands capable of multiple interactions.
- f. LPLC continuous chromatography systems allow for the simultaneous processing of multiple columns in LPLC. LPLC continuous chromatography systems consist of pumps, valves, sensors, tubing, electronic components, software, and flow paths composed of either multi-use or single-use components;
- g. Single-use TFF systems control the filtration process, which removes unwanted molecules from the cell growth process through physical separation by running liquids through porous membranes. Single-use TFF systems include sensors, valves, safety and security items, software, and network communication hardware, as well as flow kits, manifolds, and pumps composed of single-use components; and
- h. Label-free molecular characterization instruments characterize protein binding interaction and protein concentration based on measurement of the optical, calorimetric, electrical, acoustic, and other physical reactions to various stimuli.

6. The relevant geographic area in which to assess the competitive effects of the Acquisition is no narrower than the United States and may be as broad as the entire world.

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IV. THE STRUCTURE OF THE MARKETS

7. Respondents Danaher and GE are two of a limited number of significant participants in the markets for microcarrier beads, conventional LPLC columns, conventional LPLC skids, single-use LPLC skids, chromatography resins, LPLC continuous chromatography systems, single-use TFF systems, and label-free molecular characterization instruments, and each relevant market is highly concentrated.

8. The microcarrier beads market is highly concentrated with only three significant suppliers, including Respondents. By their own estimate, the combined firm would have a market share of greater than 70 percent. The Acquisition substantially increases concentration in the microcarrier bead market and reduces the number of major suppliers from three to two.

9. The LPLC conventional chromatography columns market is highly concentrated with only three significant suppliers, including Respondents. Respondents estimate the combined firm would have a market share of greater than 45 percent. Several fringe firms also supply the market. The Acquisition substantially increases concentration in the market for conventional LPLC chromatography columns by reducing the number of major suppliers from three to two.

10. The market for conventional LPLC skids is highly concentrated, with only three significant suppliers. GE estimates it was the leading supplier of conventional LPLC skids with over 30 percent market share in 2018. Combined, Danaher and GE would have an even larger share of the market for conventional LPLC skids. Post-Acquisition, the combined firm would compete with only significantly smaller firms.

11. With only three significant suppliers, the single-use LPLC skids market is highly concentrated and GE is the dominant supplier with approximately 80 percent market share. The Acquisition increases concentration in this market and reduces the number of significant suppliers from three to two.

12. The markets for affinity, ion exchange, and mixed mode chromatography resins are highly concentrated. GE is the dominant supplier in each resin category, accounting for more than half of all sales in each market. Danaher and GE currently compete for sales in the markets for each resin. Post-Acquisition, the combined firm would compete with only considerably smaller firms. The Acquisition substantially increases the combined firm's market power in the markets for affinity, ion exchange, and mixed mode chromatography resins.

13. Danaher and GE are the leading suppliers in the market for continuous chromatography systems. Currently, Danaher has approximately 28 percent market share and GE has approximately 14 percent share. Only three other suppliers compete in this market, and the combined firm would have a market share of over 40 percent. The Acquisition substantially increases concentration in the market for continuous chromatography systems.

14. Danaher and GE are two of only three major competitors in the market for single-use TFF systems. GE's TFF system has gained significant market share since recently entering the market and currently competes closely with Danaher's system. Respondents estimate the

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combined firm would have a market share of greater than 35 percent. The Acquisition will substantially increase concentration in the market for single-use TFF systems.

15. Danaher and GE currently compete in the market for label-free molecular characterization instruments where they are the two major suppliers. By their own estimates Danaher has approximately 23 percent share and GE has about 39 percent leaving the combined firm with share greater than 60 percent. The Acquisition substantially increases concentration in the market for label-free molecular characterization instruments.

V. ENTRY CONDITIONS

16. Entry or expansion into the relevant markets described in Paragraph 5 would not be timely, likely or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition.

17. Entry into each relevant market requires a significant amount of time and resources. In each relevant market, a firm must develop products with high levels of performance and reliability to establish the brand recognition necessary to compete effectively. A potential entrant into each relevant market must develop around or obtain licenses for existing intellectual property or design around existing intellectual property to compete effectively. Moreover, a potential entrant must establish a sufficient sales force that offers high-quality technical support and that can establish effective relationships with customers of the relevant products.

VI. EFFECTS OF THE ACQUISITION

18. The effects of the Acquisition, if consummated, may be to substantially lessen competition in each relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating actual, direct, and substantial competition between Danaher and GE and reducing the number of competitors for the sale of each relevant product;
- b. by increasing Respondent Danaher's ability to unilaterally exercise market power for each relevant product;
- c. by increasing the likelihood that consumers would be forced to pay higher prices for each relevant product; and
- d. by reducing Respondents Danaher's incentive to improve quality, service, and innovation for each relevant product.

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VII. VIOLATIONS CHARGED

19. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this nineteenth day of March, 2020 issues its Complaint against said Respondent.

By the Commission, Commissioners Chopra and Slaughter dissenting.

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission initiated an investigation of the proposed acquisition by Respondent Danaher Corporation of Respondent General Electric Company's Biopharma business (each a "Respondent," and collectively "Respondents"). The Commission's Bureau of Competition prepared and furnished Respondents and Sartorius AG the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents, Sartorius, and the Bureau of Competition executed an Agreement Containing Consent Order ("Consent Agreement") containing (1) an admission by Respondents and Sartorius of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order and Order to Hold Separate and Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Hold Separate and Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to

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Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings:

1. Respondent Danaher is a corporation organized, existing, and doing business under, and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 2200 Pennsylvania Avenue, NW, Suite 800W Washington, DC 20037.
2. Respondent GE is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New York, with its headquarters located at 41 Farnsworth Street, Boston, Massachusetts 02210.
3. Sartorius is a corporation organized, existing and doing business under, and by virtue of, the laws of Germany with its headquarters at Otto-Brenner-Str. 20, 37079 Goettingen, Germany, and includes Sartorius Stedim North America Inc., a corporation organized, existing and doing business under, and by virtue of, the laws of the State of Delaware with its headquarters located at 565 Johnson Ave., Bohemia, New York 11716.
4. The Commission has jurisdiction over the subject matter of this proceeding and over Respondents, and the proceeding is in the public interest.

ORDER**I. Definitions**

IT IS HEREBY ORDERED that, as used in this Order to Hold Separate and Maintain Assets, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

- A. “Decision and Order” means:
 1. The proposed Decision and Order contained in the Consent Agreement in this matter, until issuance of a final Decision and Order by the Commission; and
 2. The final Decision and Order, once it is issued by the Commission in this matter.
- B. “Orders” means this Order to Hold Separate and Maintain Assets and the Decision and Order.

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II. Hold Separate and Asset Maintenance**IT IS FURTHER ORDERED** that:

- A. During the Hold Separate Period, Respondent Danaher shall continue to operate the Hold Separate Businesses as independent, ongoing, economically viable businesses and shall: (1) hold them separate and apart from Respondent Danaher's other businesses, (2) take no action to integrate the operations of the Hold Separate Businesses with other Danaher businesses; (3) take no action to coordinate the operations of the Hold Separate Businesses with any other business of Respondent Danaher other than back office services, such as IT services and administration of compensation and benefits, as long as the confidentiality provisions of Paragraph V are complied with; and (4) vest them with all rights, powers, and authority necessary to conduct business in a manner consistent with the Orders.
- B. Prior to the Acquisition Date, Respondent Danaher shall appoint Jeffrey Figg, Senior Vice President Finance for Pall, to oversee, subject to Respondent Danaher's Hold Separate Commitments to the European Commission, the operations of each Hold Separate Business and ensure Respondent Danaher's compliance with the Orders during the Hold Separate Period. Mr. Figg shall serve during the Hold Separate Period and shall have no duties related to the GE Biopharma business during the Hold Separate Period.
- C. For the Divestiture Businesses during the Hold Separate Period, Respondent Danaher shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of each.
- D. During the Hold Separate Period, Respondent Danaher shall, subject to legal and regulatory requirements, operate the Divestiture Businesses in the ordinary course of business consistent with past practices, including:
 - 1. Maintaining the Divestiture Businesses in substantially the same condition (except for normal wear and tear) existing on December 18, 2019, and maintaining relations and good will with employees, suppliers, customers, landlords, creditors, agents, and others having business relationships with the Divestiture Businesses;
 - 2. Providing the Divestiture Businesses with sufficient financial and other resources to:
 - a. Operate the Divestiture Businesses Assets and the Divestiture Businesses at least at the current rate of operation and staffing and to carry out, at their scheduled pace, all business plans, sales and

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promotional activities in place prior to the date the Acquisition was announced;

- b. Perform all maintenance to, and replacements or remodeling of, the assets of the Divestiture Businesses in the ordinary course of business and in accordance with past practice and current plans, and
 - c. Carry on such capital projects, physical plant improvements, and business plans as are already underway or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to, existing or planned renovation, remodeling, or expansion projects;
 - 3. Preserving the Divestiture Businesses Assets and the Divestiture Businesses as ongoing businesses; and
 - 4. Taking or failing to take any actions that would diminish the viability, competitiveness, and marketability of the Divestiture Businesses Assets or the Divestiture Businesses.
- E. Until such time as the Acquirer replicates the manufacture, assembly, testing, packaging, and selling of products related to Flow Kit Consumables in a manner that fulfills the Acquirer's worldwide demand, Respondent Danaher:
- 1. Shall take actions as are necessary to operate the equipment related to Flow Kit Consumables in the regular and ordinary course of business and in accordance with past practices and in a manner consistent with applicable laws and regulation; and
 - 2. Prevent the destruction, removal, wasting, deterioration, or impairment of the Flow Kit Consumables; and
- F. Shall not take any actions to reduce the availability of the services of the current officers, employees, and agents of Respondent Danaher required to operate and maintain the equipment related to Flow Kit Consumables. Until 12 months after the Divestiture Date, Respondent Danaher shall require that each sales or marketing employee who was employed by Pall Corporation prior to the Divestiture Date sign a confidentiality agreement that prohibits the employee from disclosing Confidential Business Information regarding the Divestiture Businesses and opportunities for the sale of products marketed by the Divestiture Businesses.
- G. Until 3 days after the Divestiture Date, Respondent Danaher shall continue the Special Sales Incentive Program and Clarifications to the Sales Incentive Program listed in non-public Appendix G of the Decision and Order, and shall provide Pall Corporation sales and marketing staff with written notification explaining the Special Sales Incentive Program and Clarifications to the Sales Incentive Program

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on or before the Acquisition Date. Written notification shall be reviewed and approved by the Monitor, and shall include a requirement that the recipient acknowledge receipt and confirm his or her understanding of the notification.

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

- A. Until a year after the Divestiture Date, Respondent Danaher shall cooperate with and assist the Acquirer of the Divestiture Businesses Assets to evaluate independently and offer employment to the Relevant Employees, with such cooperation to include at least the following:
1. Not later than 5 business days after a request from the Acquirer, Respondent Danaher shall, to the extent permitted by applicable law:
 - a. Provide to the Acquirer a list of all Relevant Employees and provide Employee Information for each; and
 - b. Allow the Acquirer a reasonable opportunity to interview any Relevant Employees;
 2. Not later than 10 days after a request from the Acquirer, Respondent Danaher shall provide an opportunity for the Acquirer to:
 - a. Meet personally, and outside the presence or hearing of any employee or agent of Respondent Danaher, with any of the Relevant Employees; and
 - b. Make offers of employment to any of the Relevant Employees;
 3. Respondent Danaher shall not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the Relevant Employees, not offer any incentive to Relevant Employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Relevant Employees by the Acquirer;
 4. Respondent Danaher shall remove any impediments within its control that may deter any Relevant Employees from accepting employment with the Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondent Danaher that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to any Relevant Employees who receive an offer of employment from the Acquirer; *provided, however*, that nothing in the Orders shall be construed to require Respondent Danaher to terminate the

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employment of any employee or prevent Respondent Danaher from continuing the employment of any employee;

5. Respondent Danaher shall provide Relevant Employees with reasonable financial incentives to continue in their positions, and as may be necessary to facilitate the employment of such Relevant Employees by the Acquirer. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondent Danaher, including regularly scheduled or merit raises and bonuses, regularly scheduled vesting of pension benefits, and additional reasonable incentives as may be necessary.
6. If the Acquirer has made a written offer of employment to any Key Employee, provide such Key Employee with reasonable financial incentives to accept a position with the Acquirer, including payment of an incentive equal to up to 3 months of such Key Employee's base salary to be paid only upon such Key Employee's completion of 1 year of employment with the Acquirer.

Provided, however, that for a period of 1 year from the Divestiture Date, Respondent Danaher, the Acquirer, and the Monitor will work together in good faith to determine whether any additional Relevant Employees should be identified as a Key Employee and subject to the provisions of this Paragraph III.A.6.

Provided further, however, the total number of Relevant Employees, including Key Employees, shall not exceed 43 employees.

B. Respondent Danaher shall:

1. For a period of 1 year from the Divestiture Date, not directly or indirectly solicit or induce, or attempt to solicit or induce, any Relevant Employee who has accepted an offer of employment with, or who is employed by, an Acquirer to terminate his or her employment relationship with the Acquirer.
2. For a period of 2 years from the Divestiture Date, not directly or indirectly solicit or induce, or attempt to solicit or induce, any Key Employee who has accepted an offer of employment with, or who is employed by, an Acquirer to terminate his or her employment relationship with the Acquirer.

Provided, however, a violation of this Paragraph III.B will not occur if:

1. The employee's employment has been terminated by the Acquirer;
2. Respondent Danaher advertises for employees in newspapers, trade publications, or other media not targeted specifically at any one or more of the employees of the Acquirer; or

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3. Respondent Danaher hires an employee who has applied for employment with Respondent Danaher, provided that such application was not solicited or induced in violation of the Orders.

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

- A. Respondent Danaher shall provide Transition Services that are sufficient to (i) efficiently transfer the Divestiture Businesses Assets to the Acquirer and (ii) enable the Acquirer to operate the Divestiture Businesses Assets and Divestiture Businesses in a manner equivalent in all material respects to the manner in which Respondent Danaher operated the Divestiture Businesses Assets and Divestiture Businesses prior to the Acquisition Date and shall provide Transition Services:
 1. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);
 2. At the price set forth in a Divestiture Agreement or otherwise mutually agreed to, or at Direct Cost; and
 3. Until the later of 24 months after the Divestiture Date or a period sufficient to meet the requirements of this paragraph.
- B. Respondent Danaher shall permit the Acquirer to stop receiving any type of Transition Services and any Transition Product upon commercially reasonable notice and without cost or penalty.
- C. Respondent Danaher, in consultation with the Acquirer, for the purposes of ensuring an orderly transition of the Divestiture Businesses and the Divestiture Businesses Assets, shall:
 1. Develop and implement a detailed transition plan to ensure that the commencement of the operation of the Divestiture Businesses by the Acquirer is not delayed or impaired by the Respondent Danaher;
 2. Designate employees of Respondent Danaher who are knowledgeable about the operation of each of the Divestiture Businesses to be responsible for communicating directly with the Acquirer and the Monitor to assist in the transferring the Divestiture Businesses and the Divestiture Businesses Assets to the Acquirer;
 3. Until Respondent Danaher has transferred to the Acquirer all Business Information included in the Divestiture Businesses Assets, Respondent Danaher shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondent Danaher has not

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yet transferred, and to employees who possess or are able to locate the records and information; and

4. Establish projected timelines for accomplishing all tasks necessary to transfer the Divestiture Businesses Assets and enable the Acquirer to operate the Divestiture Businesses in an efficient and timely manner.
- D. Respondent Danaher shall supply Acquirer with each Transition Product pursuant to the Divestiture Agreement that has been approved by the Commission for a period sufficient for Acquirer to find alternative sources or independently manufacture the Transition Product in a manner that allows Acquirer to fulfill its worldwide demand.
 - E. Respondent Danaher shall not cease providing Transition Assistance or supplying Transition Products due to a breach by the Acquirer of the Divestiture Agreement or any other agreement through which Respondent Danaher provides Transition Assistance or supplies a Transition Product.
 - F. Respondent Danaher shall not enter into any agreement, including the Divestiture Agreement, with the Acquirer that limits the Acquirer's ability to seek any type or amount of damages for breach of Respondent Danaher's obligations relating to Transition Services or supplying Transition Products.

V. Confidentiality Obligations

IT IS FURTHER ORDERED that:

- A. Respondent Danaher shall:
 1. Maintain the confidentiality, and prevent the disclosure of, Confidential Business Information regarding the Divestiture Businesses Assets and the Divestiture Businesses ("Confidential Divestiture Information") by, *inter alia*:
 - a. Providing, disclosing or using Confidential Divestiture Information only as necessary to provide Transition Services to the Acquirer, supply Transition Products to the Acquirer, or comply with any legal or regulatory requirement, and
 - b. Requiring all employees and representatives who possess or are provided with Confidential Divestiture Information to execute non-disclosure agreements that prevent the use or disclosure of Confidential Divestiture Information for purposes not authorized by the Orders;

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2. Institute procedures and requirements to ensure that the employees providing Transition Services or supplying Transition Products to the Acquirer do not provide, disclose, or otherwise make available, directly or indirectly, any Confidential Divestiture Information in contravention of the Orders and do not solicit, access, or use any Confidential Divestiture Information that they are prohibited from receiving for any reason or purpose;
 3. Upon the request of the Acquirer, destroy any copies of Confidential Divestiture Information (other than electronic copies of Confidential Divestiture Information created as a result of automatic back-up procedures) within 30 days of such request *except* as otherwise agreed to between Respondent Danaher and the Acquirer or to the extent necessary to comply with applicable law; and
 4. Take all action necessary and appropriate to prevent access to, and the disclosure or use of, the Confidential Divestiture Information by or to any Person(s) not authorized to access, receive, and/or use such information pursuant to the terms of the Orders, including:
 - a. Establishing and maintaining appropriate firewalls, confidentiality protections, internal practices, training, communications, protocols, and system and network controls and restriction, and
 - b. Ensuring by other reasonable and appropriate means that the Confidential Divestiture Information is not shared with any employee of Respondent Danaher personnel engaged in any business that competes with one or more of the Divestiture Businesses.
- B. Not later than 30 days after the Divestiture Date, Respondent Danaher shall provide written notification of the restrictions on the use and disclosure of the Confidential Divestiture Information to all employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information. Respondent Danaher 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 Divestiture Date. Respondent Danaher shall provide a copy of the notification to the Acquirer. Respondent Danaher shall maintain complete records of all such notifications at Respondent Danaher's registered office within the United States of America. Respondent Danaher shall provide the Acquirer with copies of all certifications, notifications, and reminders sent to Respondent Danaher's personnel.

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VI. Monitor

IT IS FURTHER ORDERED that:

- A. Mazars LLP is appointed Monitor to ensure that Respondent Danaher expeditiously complies with all of its obligations and perform all of its responsibilities as required by the Orders.
- B. No later than one day after the Commission issues this Order, Respondent Danaher shall, pursuant to the Monitor Agreement, attached as Appendix D and Non-Public Appendix E (Compensation) to the Decision and Order, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities in a manner consistent with the purposes of the Orders.
- C. The Monitor shall serve, without bond or other security, at the expense of Respondent Danaher, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Danaher, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission;
- D. Respondent Danaher shall provide the Monitor with the power and authority to monitor Respondent Danaher's compliance with the terms of the Orders and Divestiture Agreements, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Orders, and in consultation with the Commission, including, but not limited to:
 - 1. Ensuring that Respondent Danaher expeditiously complies with all obligations and performs all responsibilities as required by the Orders and the Divestiture Agreement;
 - 2. Monitoring any transition services agreements; and
 - 3. Ensuring that Confidential Business Information is not received or used by Respondent Danaher, except as allowed in the Orders;
 - 4. Subject to any demonstrated legally recognized privilege, full and complete access to Respondent Danaher's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent Danaher's compliance with their obligations under the Orders and the Divestiture Agreement. Respondent Danaher shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor

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Respondent Danaher's compliance with the Orders and the Divestiture Agreements;

5. Provide the Monitor with copies of all reports Respondent Danaher is required to submit to the Commission or Commission staff pursuant to the Orders.
- E. The Monitor is an independent third party and not as an employee or agent of the Respondent Danaher or of the Commission;
- F. The Monitor's appointment shall last for such time as is necessary to monitor Respondent Danaher's compliance with the provisions of the Orders and the Divestiture Agreements;
- G. Respondent Danaher shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 Monitor.
- H. In connection with its appointment by the Commission, the Monitor shall report in writing to the Commission evaluating reports Respondent Danaher has submitted to the Commission and describing Respondent Danaher's performance of its obligations under the Orders. The Monitor shall submit a report to staff of the Commission one month after the Commission issues the Orders, every 60 days thereafter, and at such other times as staff of the Commission may request.
- I. Respondent Danaher may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement so long as such agreement shall not restrict the Monitor's ability to provide information to the Commission or require the Monitor to inform Respondent Danaher of the substance of communications with the Commission.
- J. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondent Danaher, which consent shall not be unreasonably

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withheld. If Respondent Danaher has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within 10 days after notice by the staff of the Commission to Respondent Danaher of the identity of any proposed Monitor, Respondent Danaher shall be deemed to have consented to the selection of the proposed Monitor. Not later than ten 10 days after appointment of a substitute Monitor, Respondent Danaher shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent Danaher's compliance with the terms of the Orders and the Divestiture Agreements in a manner consistent with the purposes of the Order.

- L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders and the Divestiture Agreements.

The Monitor appointed pursuant to the Orders may be the same Person appointed as a Divestiture Trustee pursuant to the Orders.

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

- A. If Respondent Danaher has not fully complied with the obligations imposed by the Orders, the Commission may appoint a Divestiture Trustee to divest any of the Divestiture Businesses, and perform Respondent Danaher's other obligations in a manner that satisfies the requirements of the Orders. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondent Danaher shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VII shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to Section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent Danaher to comply with the Orders.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Danaher, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Danaher has not opposed, in writing, and stated in writing its reasons for opposing, the selection of any proposed Divestiture Trustee within ten 10 days after notice by the staff of the Commission to Respondent Danaher of the identity of any proposed Divestiture Trustee, Respondent Danaher shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

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- C. Not later than 10 days after the appointment of a Divestiture Trustee, Respondent Danaher 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 effectuate the divestitures required by, and satisfy the additional obligations imposed by, the Orders.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VII, Respondent Danaher 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 effectuate the divestitures required by, and satisfy the additional obligations imposed by, the Orders;
 2. The Divestiture Trustee shall have one year after the date the Commission approves the trust agreement described herein to effectuate the required divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one year period, the Divestiture Trustee has submitted a plan to divest, or believes the divestitures can be achieved within a reasonable time, the divestiture period may be extended up to 2 times by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court;
 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 divested by the Decision and Order and to any other relevant information, as the Divestiture Trustee may request. Respondent Danaher shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent Danaher shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondent Danaher shall extend the time for divestiture under this Paragraph VII for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;
 4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Danaher's absolute and unconditional obligation to divest expeditiously and at no minimum price and in a manner and to an Acquirer approved by the Commission.
 5. 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

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acquiring Person selected by Respondent Danaher from among those approved by the Commission unless the Respondent Danaher fails to make a selection within 5 days after receiving notification of the Commission's approval;

6. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent Danaher, 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 Respondent Danaher, 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 Respondent Danaher, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by the Decision and Order;
7. Respondent Danaher 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;
8. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by the Decision and Order;
9. The Divestiture Trustee shall report in writing to Respondent Danaher and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture;
10. Respondent Danaher 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*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission; and

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11. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, representatives, and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.
- E. If the Commission determines that the 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 VII.
- F. 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 divestitures required by the Orders.

VIII Prior Approval and Prior Notice**IT IS FURTHER ORDERED** that:

- A. For a period lasting until 3 years after the Divestiture Date, Sartorius shall not sell, transfer or otherwise convey, directly or indirectly, any interest in the Pall Businesses to any Person without the prior approval of the Commission.
- B. For a period lasting until 3 years after the Divestiture Date, Sartorius shall not acquire any interest in the Prior Approval Business (as defined in non-public Appendix F to the Decision and Order) or any assets used in the Prior Approval Business without the prior approval of the Commission.
- C. For a 2 year period commencing 3 years after the Divestiture Date, Sartorius shall not, without providing prior notification to the Commission in the manner described in this Paragraph VIII, acquire any assets of, or any financial, ownership, or interest in the Prior Approval Business.
 1. Said prior notification under this Paragraph shall be in the form of a letter submission with attachments, and shall contain the following:
 - a. A written description of the transaction, including the identification of the assets involved, Sartorius' plans for the Prior Notice Business; and how the acquired assets will be integrated into Sartorius' existing businesses;
 - b. The proposed acquisition agreement with all attachments or, if no agreement exists, a detailed term sheet for the proposed acquisition;

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- c. All recommendation or approval materials, including any analyses used to support those recommendations or approvals, relating to the proposed acquisition (including materials prepared by or for any board, management committee, or executive committee);
 - d. A description of the projected or likely effects of the transaction on revenues, operations, or capital expenditures; and
 - e. All other documents that would be responsive to Items 4(c) and 4(d) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 14 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, relating to the proposed transaction and not otherwise provided.
2. Sartorius shall verify the notification in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function, and shall attest that a contract, agreement in principle, or letter of intent to merge or acquire has been executed, and further attest to the good faith intention of Sartorius to complete the noticed transaction. Sartorius shall file an original and one copy of the notification only with the Secretary of the Commission, and need not make any filing to the United States Department of Justice. Notification is required from Sartorius and not from any other party to the transaction. No filing fee will be required for any such notification.
3. Sartorius shall provide prior notification to the Commission at least 30 days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Sartorius shall not consummate the transaction until 30 days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph VIII may be requested and, where appropriate, granted by letter from staff of the Bureau of Competition.

Provided, however, that prior notification shall not be required by this Paragraph VIII for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

IX. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondent Danaher shall file verified written reports (“compliance reports”) in accordance with the following:

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1. Respondent Danaher shall submit compliance reports 30 day after the Commission issue this Order to Hold Separate and Maintain Assets and every 30 days thereafter until the Commission issues a Decision and Order in this matter.
2. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent Danaher is complying with its obligations under the Orders. Conclusory statements that Respondent Danaher has complied with its obligations are insufficient. Respondent Danaher shall include in its reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measure Respondent Danaher has implemented or plans to implement to ensure that it has complied or will comply with each paragraph of the Orders;
3. Respondent Danaher shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent Danaher's obligations under the Orders and provide copies of these documents to Commission staff upon request.
4. Respondent Danaher shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondent Danaher shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondent Danaher shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

Provided, however, that, after the Decision and Order in this matter is issued as final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission on the same timing as, the compliance reports required to be submitted by Respondent Danaher pursuant to the Decision and Order.

X. Change in Respondent Danaher

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

- A. The dissolution of Danaher Corporation;
- B. The acquisition, merger or consolidation of Danaher Corporation; or

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- C. Any other change in Respondent Danaher, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of the Orders.

XI. Access

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

- A. Access, during business office hours of Respondent Danaher and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of Respondent Danaher related to compliance with the Orders, which copying services shall be provided by Respondent Danaher at the request of the authorized representative of the Commission and at the expense of the Respondent Danaher; and
- B. To interview officers, directors, or employees of Respondent Danaher, who may have counsel present, regarding such matters.

XII. Purpose

IT IS FURTHER ORDERED that the purpose of the Orders is to ensure the continuation of the Divestiture Businesses as ongoing viable businesses engaged in the same business in which the assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in this matter.

XIII. Term

IT IS FURTHER ORDERED that this Order to Hold Separate and Maintain Assets shall terminate at the earlier of:

- A. 3 business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after Respondent Danaher's (or a Divestiture Trustee's) completion of the divestitures required by Paragraph II of the Decision and Order;

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Provided, however, that if at the time such divestitures have been completed, the Decision and Order in this matter is not yet final, then this Order to Hold Separate and Maintain Assets shall terminate three business days after the Decision and Order becomes final;

Provided, further, however, that if the Commission, pursuant to Paragraph II.H of the Decision and Order, requires Respondent Danaher to rescind the divestiture to Sartorius, then, upon rescission, the requirements of this Order to Hold Separate and Maintain Assets shall again be in effect until the day after Respondent Danaher's (or a Divestiture Trustee's) completion of the divestiture of the assets required by the Decision and Order.

By the Commission, Commissioners Chopra and Slaughter dissenting.

DECISION

The Federal Trade Commission initiated an investigation of the proposed acquisition by Respondent Danaher Corporation of Respondent General Electric Company's Biopharma business (each a "Respondent," and collectively "Respondents"). The Commission's Bureau of Competition prepared and furnished Respondents and Sartorius AG the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents, Sartorius, and the Bureau of Competition executed an Agreement Containing Consent Order ("Consent Agreement") containing (1) an admission by Respondents and Sartorius of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order and Order to Hold Separate and Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Hold Separate and Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings:

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1. Respondent Danaher is a corporation organized, existing, and doing business under, and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 2200 Pennsylvania Avenue, NW, Suite 800W Washington, DC 20037.
2. Respondent GE is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New York, with its headquarters located at 41 Farnsworth Street, Boston, Massachusetts 02210.
3. Sartorius is a corporation organized, existing and doing business under, and by virtue of, the laws of Germany with its headquarters at Otto-Brenner-Str. 20, 37079 Goettingen, Germany, and includes Sartorius Stedim North America Inc., a corporation organized, existing and doing business under, and by virtue of, the laws of the State of Delaware with its headquarters located at 565 Johnson Ave., Bohemia, New York 11716.
4. The Commission has jurisdiction over the subject matter of this proceeding and over Respondents, and the proceeding is in the public interest.

ORDER**I. Definitions**

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

- A. “Danaher” means Danaher Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Danaher Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “GE” mean General Electric Company, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by General Electric Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Sartorius” means Sartorius AG, a German corporation with its principal executive offices located at Otto-Brenner-Str. 20, 37079 Goettingen, Germany.
- D. “Commission” means the Federal Trade Commission.
- E. “Acquirer” means:
 1. Sartorius; or

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2. Any other Person that the Commission approves to acquire one or more Divestiture Business(es) pursuant to this Decision and Order.
- F. “Acquisition” means the proposed acquisition described in the Equity and Asset Purchase Agreement, dated February 25, 2019, between GE and Danaher.
- G. “Acquisition Date” means the date on which Respondents consummate the Acquisition.
- H. “Business Information” means all books, records, data, and information, wherever located and however stored, relating to the Divestiture Businesses Assets or used in one or more Divestiture Businesses, including documents, written information, graphic materials, and data and information in electronic format, along with the unwritten knowledge of employees, contractors and representatives. Business Information includes Respondent Danaher’s right and control over information and material provided to any other person.
- I. “Chromatography Hardware Business” means the research, development, manufacture, commercialization, distribution, marketing, advertisement, sale, and servicing of conventional chromatography columns, conventional (stainless steel) and single-use chromatography skids, and BioSMB continuous chromatography skids (which includes a process development offering known as BioSMB PD and two process scale offerings known as BioSMB Process 80 and 350) by Respondent Danaher. The business comprises the Flow Kit Consumables, and all related parts and equipment used in process development, pilot-scale and commercial production for chromatography columns, and simulated moving bed chromatography hardware and software, as well as customizable and standard platform single-use chromatography and conventional stainless steel chromatography systems for equilibration, product load, buffer wash, product elute and rinse of chromatography columns packed with resin for chromatography skids.
- J. “Confidential Business Information” means any non-public Business Information relating to the Divestiture Businesses Assets or the Divestiture Businesses:
1. Obtained by Respondent Danaher prior to the Divestiture Date; or
 2. Obtained by Respondent Danaher after the Divestiture Date, in the course of performing Respondent Danaher’s obligations under this Order or any Divestiture Agreement (including any Transition Services agreement),
- provided, however*, Confidential Business Information shall not include Business Information that has entered the public domain through no act or failure to act by Respondent Danaher.
- K. “Consent” means any approval, consent, ratification, waiver, or other authorization.

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- L. “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 Respondent Danaher’s employees shall not exceed the then-current average hourly wage rate (including benefits) for such employees.
- M. “Divestiture Agreement(s)” means:
1. Purchase Agreement by Respondent Danaher and Sartorius dated October 18, 2019, and all amendments, exhibits, attachments, agreements (including the Transition Services Agreement, Supply and Service Agreement, and Intellectual Property License Agreement), and schedules thereto, attached to this Decision and Order as Non-Public Appendix A; or
 2. Any agreement between Respondent Danaher (or a Divestiture Trustee appointed pursuant to Paragraph IX of this Order) and an Acquirer to purchase the Divestiture Businesses Assets, and all amendments, exhibits, attachments, agreements, and schedules thereto.
- N. “Divestiture Businesses” means the Molecular Characterization Business, Microcarriers and PVS Business, Resins Business, Chromotography Hardware Business, and the SUT TFF Business.
- O. “Divestiture Businesses Assets” means all Respondent Danaher’s legal or equitable rights, title, and interests in and to all tangible and intangible assets that are not Excluded Assets, wherever located, relating to the Divestiture Businesses, including:
1. Real property interests owned, leased or otherwise held including easements and appurtenances, together with buildings, facilities and other structures, and improvements thereto, including:
 - a. The Cergy facility (land and building) owned and operated by Respondent Danaher that currently houses the Resins Business located at 48 Avenue des Genottes, 95800, Cergy, France.
 - b. Leases to the following real property sites:
 - i. The Fremont facility, leased by Molecular Devices LLC from PLDSPE LLC, located at 47661 Fremont Boulevard, Fremont, 94538, California, USA;
 - ii. The Shanghai facility, leased by Pall ForteBio Analytics (Shanghai) Co, Ltd. from Haowei Science and Technology Co., located at No. 88 Shang Ke Road, 3rd Floor Zhangjiang Hi-tech Park, Shanghai, 201210, China; and

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- iii. The Ann Arbor facility, leased by Pall Corporation from AA Commerce Park JV, L.L.C., located at 4370 Varsity Drive Suite B, Ann Arbor, 48108, MI, USA.
 - iv. The Hopkinton facility, leased by Pall Corporation from O'Brien Investment Management, LLC, located at 116-118 South Street, Hopkinton, Massachusetts.
- 2. Intangible rights and property, including Intellectual Property, owned, used, or licensed (as licensor or licensee) by Respondent Danaher, going concern value, goodwill, and telephone listings, internet sites and social media accounts;
 - 3. Tangible personal property, whether owned or leased, including machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, together with all express or implied warranties by manufacturers, sellers or lessors and all maintenance records and operating manuals;
 - 4. Inventories;
 - 5. Business Information;
 - 6. Governmental authorizations and all pending applications for governmental authorizations;
 - 7. At the option of the Acquirer, any equipment used by Respondent Danaher to manufacture, assemble, test, package, or sell flow kit consumables for the Flow Kit Consumables Business;
 - 8. The content related exclusively to one or more Divestiture Businesses that is displayed on any website that is not dedicated exclusively to Divestiture Businesses; and
 - 9. Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto, *provided, however*, that Replacement Contracts may be substituted for Shared Contracts.
- P. "Divestiture Date" means the date on which Respondent Danaher (or a Divestiture Trustee appointed pursuant to Paragraph IX of this Order) consummates the divestiture of the Divestiture Businesses Assets as required by Paragraph II of this Order.
- Q. "Divestiture Trustee" means the person appointed pursuant to Paragraph IX of this Order.

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- R. “Employee Information” means, for each Relevant Employee, the following information summarizing the employment history of each employee that includes, as requested by the proposed Acquirer and to the extent permitted by applicable law:
1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee’s responsibilities;
 3. The base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondent Danaher’s last fiscal year, and current target or guaranteed bonus, if any;
 5. Written performance reviews for the past three years, if any;
 6. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 7. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 8. At the proposed Acquirer’s option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee;
- S. “Excluded Assets” means the assets listed in non-public Appendix B.
- T. “Flow Kit Consumables” means the research, development, assembly, commercialization, distribution, marketing, advertisement, sale, and servicing of flow kit consumables for use and sale with products manufactured by Respondent Danaher’s SUT TFF Business and Chromatography Hardware Business.
- U. “ForteBio Molecular Characterization Business” means the research, development, manufacture, commercialization, distribution, marketing, advertisement, sale, and servicing of the ForteBio molecular characterization instruments and consumables by Respondent Danaher, which comprise instruments and related consumables that enable label-free qualification and real-time kinetic analysis of biomolecular research and development.
- V. “Hold Separate Businesses” means Respondent Danaher’s ForteBio Molecular Characterization Business and Respondent Danaher’s subsidiary Pall Corporation.
- W. “Hold Separate Commitments” means Respondent Danaher’s commitment to hold separate each Divestiture Business pursuant to the European Commission’s conditional approval of the Acquisition on December 18, 2019.

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- X. “Hold Separate Period” means the period from the Acquisition Date until one day after all of the Divestiture Businesses Assets have been finally transferred to the Acquirer.
- Y. “Intellectual Property” means intellectual property of any kind including, but not limited to, patents, patent applications, mask works, trademarks, service marks, copyrights, trade dress, commercial names, internet web sites, internet domain names, inventions, discoveries, written and unwritten know-how, trade secrets, and proprietary information.
- Z. “Key Employees” means the employees listed in non-public Appendix C to this Order.
- AA. “Licensed Intellectual Property” means any Intellectual Property licensed by Respondent Danaher, and all associated rights, thereto, relating to the Divestiture Businesses.
- BB. “Microcarriers and PVS Business” means the research, development, manufacture, commercialization, distribution, marketing, advertisement, and sale of microcarriers and particle validation standards (“PVS”) by Respondent Danaher, which comprise polystyrene microbeads used in bioreactors upstream to promote attachment and growth of certain cells as well as the particle validation standards business, and custom-manufactured defect test kits.
- CC. “Monitor” means the person approved by the Commission to serve as Monitor pursuant to this Order or the Order to Hold Separate and Maintain Assets.
- DD. “Orders” means this Decision and Order and the related Order to Hold Separate and Maintain Assets.
- EE. “Pall Businesses” means the Chromatography Hardware Business, SUT TFF Business, and the Resins Business.
- FF. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity of governmental body.
- GG. “Relevant Employees” means all full-time, part-time and contract employees of Respondent Danaher whose duties, in whole or part, relate to the Divestiture Businesses at any time during the 18 months prior to the Acquisition Date and who are not employees of the Acquirer the day after the Divestiture Date. Key Employees are Relevant Employees.
- HH. “Replacement Contracts” means (i) Contracts entered into by the Acquirer with a third party, or a portion of a Shared Contract assigned to the Acquirer by the Respondent, in advance of the Divestiture Date that replace Shared Contracts with a separate Contract for the Divestiture Businesses; or (ii) arrangements between

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Respondent and Acquirer that provide the Divestiture Businesses with no less favorable terms, services, and economic benefits as it would have had under the Shared Contracts.

- II. “Resins Business” means the research, development, manufacture, commercialization, distribution, marketing, advertisement, and sale of resins by Respondent Danaher, which comprise sorbent solutions, including ion exchange resins, mixed mode resins and affinity resins used in process chromatography, and Ultrosor serum and Helix Pomatia Juice.
- JJ. “Shared Contracts” means Contracts that relate to both the Divestiture Businesses and other businesses retained by Respondent.
- KK. “SUT TFF Business” means the research, development, manufacture, commercialization, distribution, marketing, advertisement, sale, and servicing of single-use tangential flow filtration (“TFF”) skids by Respondent Danaher. This business comprises the Flow Kit Consumables, and customized and standard platform process development and process scale single-use TFF skids that includes hardware and software configured for use with single-use TFF technology for biopharma applications.
- LL. “Transition Products” are the following products used by Respondent Danaher in one or more Divestiture Businesses:
 - 1. Filters used in resin processing for the Resins Business;
 - 2. Single-use bags used in gamma irradiated microcarrier delivery systems for the Microcarriers and PVS Business;
 - 3. Fully assembled flow kit consumables used in the Chromatography Hardware Business and SUT TFF Business; and
- MM. “Transition Services” means interim services, assistance, cooperation, training and access to personnel regarding any aspect of the Divestiture Businesses or transfer of Divestiture Businesses Assets.

II. Divestiture

- A. No later than the earlier of: 45 days after the Acquisition Date or 10 days after Respondent Danaher receives all regulatory approvals necessary to consummate the Divestiture Agreement, Respondent Danaher shall divest the Divestiture Businesses Assets, absolutely and in good faith, to Sartorius pursuant to, and in accordance with, the Divestiture Agreement,

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provided that Respondent Danaher may retain and use copies of divested Business Information to the extent necessary to comply with applicable law, regulations, and other legal requirements or to provide Transition Services.

- B. No later than the Divestiture Date, Respondent Danaher shall obtain, at its sole expense, each Consent required to divest and transfer the Divestiture Businesses Assets, including Intellectual Property. Respondent Danaher may satisfy this requirement for a required Consent by certifying that the Acquirer has made equivalent arrangements or has otherwise directly obtained the necessary Consent.
- C. Respondent Danaher shall deliver Business Information and Intellectual Property that are Divestiture Businesses Assets to the Acquirer as soon as practicable after the Divestiture Date in a manner that ensures their completeness, accuracy, and usefulness, and meets the reasonable requirements of the Acquirer.
- D. No later than the Divestiture Date, Respondent Danaher shall:
 - 1. Provide Acquirer with a royalty-free, fully paid-up sublicense to, or Replacement Contract for, all Licensed Intellectual Property for use in the Divestiture Businesses; and
 - 2. Cease to use any Licensed Intellectual Property in any business that competes with one or more of the Divestiture Businesses.
- E. Respondent Danaher may receive a non-exclusive royalty-free, fully paid-up license back from the Acquirer for IP divested pursuant to Paragraph II.A of this Order, for use in any business operated by Respondent Danaher that does not compete with the Divestiture Businesses.
- F. No later than 15 days after the Divestiture Date, Respondent Danaher shall send written notification approved by the Monitor to each signatory to a Shared Contract with a customer for which Respondent Danaher has not provided a Replacement Contract. Notification shall include: (1) notice that Respondent Danaher has divested the relevant Divestiture Business to the Acquirer, (2) Acquirer's contact information; and (3) the Monitor's contact information.
- G. Respondent Danaher shall sell Pall sterile connectors and Kleenpak capsule filters to the Acquirer on a nondiscriminatory and commercially reasonable basis for use in the Divestiture Businesses.
- H. If Respondent Danaher has divested the Divestiture Businesses Assets before the Commission issues this Order and the Commission notifies the Respondent Danaher that:
 - 1. Sartorius is not an acceptable Acquirer of the Divestiture Businesses Assets, then Respondent Danaher shall:

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- a. Within 5 days of notification by the Commission, rescind the Divestiture Agreement,
 - b. Within 120 days of notification by the Commission, divest the Divestiture Businesses Assets, absolutely and in good faith, at no minimum price, to an Acquirer and in a manner that receives the prior approval of the Commission, and
 - c. Set forth the manner in which they shall divest the Divestiture Businesses Assets, and comply with the other provisions of this Order, in a proposed Divestiture Agreement that is submitted to the Commission for the prior approval required by this Order.
2. If the manner of the divestiture is not acceptable, then the Commission will direct the Respondent Danaher (or appoint a Divestiture Trustee) to modify the divestiture in the manner the Commission determines is necessary to satisfy the requirements of the Order, which may include entering into additional agreements or modifying the Divestiture Agreement.

III. Divestiture Agreement

IT IS FURTHER ORDERED that:

- A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondent Danaher to comply with the terms of the Divestiture Agreement shall constitute a violation of this Order; *provided, however*, that the Divestiture Agreement shall not limit, or be construed to limit, the terms of this Order. To the extent that any provision in the Divestiture Agreement varies from or conflicts with any provision in the Order such that Respondent Danaher cannot fully comply with both, Respondent Danaher shall comply with the Order.
- B. Respondent Danaher shall not modify or amend the terms of the Divestiture Agreement after the Commission issues the Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

IV. Transition Assistance

IT IS FURTHER ORDERED that:

- A. Respondent Danaher shall provide Transition Services that are sufficient to (i) efficiently transfer the Divestiture Businesses Assets to the Acquirer and (ii) enable the Acquirer to operate the Divestiture Businesses Assets and Divestiture Businesses in a manner equivalent in all material respects to the manner in which

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Respondent Danaher operated the Divestiture Businesses Assets and Divestiture Businesses prior to the Acquisition Date and shall provide Transition Services:

1. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);
 2. At the price set forth in a Divestiture Agreement or otherwise mutually agreed to, or at Direct Cost; and
 3. Until the later of 24 months after the Divestiture Date or a period sufficient to meet the requirements of this paragraph.
- B. Respondent Danaher shall permit the Acquirer to stop receiving any type of Transition Services and any Transition Product upon commercially reasonable notice and without cost or penalty.
- C. Respondent Danaher, in consultation with the Acquirer, for the purposes of ensuring an orderly transition of the Divestiture Businesses and the Divestiture Businesses Assets, shall:
1. Develop and implement a detailed transition plan to ensure that the commencement of the operation of the Divestiture Businesses by the Acquirer is not delayed or impaired by the Respondent Danaher;
 2. Designate employees of Respondent Danaher who are knowledgeable about the operation of each of the Divestiture Businesses to be responsible for communicating directly with the Acquirer and the Monitor to assist in the transferring the Divestiture Businesses and the Divestiture Businesses Assets to the Acquirer;
 3. Until Respondent Danaher has transferred to the Acquirer all Business Information included in the Divestiture Businesses Assets, Respondent Danaher shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondent Danaher has not yet transferred, and to employees who possess or are able to locate the records and information; and
 4. Establish projected timelines for accomplishing all tasks necessary to transfer the Divestiture Businesses Assets and enable the Acquirer to operate the Divestiture Businesses in an efficient and timely manner.
- D. Respondent Danaher shall supply Acquirer with each Transition Product pursuant to the Divestiture Agreement that has been approved by the Commission for a period sufficient for Acquirer to find alternative sources or independently manufacture the Transition Product in a manner that allows Acquirer to fulfill its worldwide demand.

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- E. Respondent Danaher shall not cease providing Transition Assistance or supplying Transition Products due to a breach by the Acquirer of the Divestiture Agreement or any other agreement through which Respondent Danaher provides Transition Assistance or supplies a Transition Product.
- F. Respondent Danaher shall not enter into any agreement, including the Divestiture Agreement, with the Acquirer that limits the Acquirer's ability to seek any type or amount of damages for breach of Respondent Danaher's obligations relating to Transition Services or supplying Transition Products.

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

- A. Until a year after the Divestiture Date, Respondent Danaher shall cooperate with and assist the Acquirer of the Divestiture Businesses Assets to evaluate independently and offer employment to the Relevant Employees, with such cooperation to include at least the following:
 - 1. Not later than 5 business days after a request from the Acquirer, Respondent Danaher shall, to the extent permitted by applicable law:
 - a. Provide to the Acquirer a list of all Relevant Employees and provide Employee Information for each; and
 - b. Allow the Acquirer a reasonable opportunity to interview any Relevant Employees;
 - 2. Not later than 10 days after a request from the Acquirer, Respondent Danaher shall provide an opportunity for the Acquirer to:
 - a. Meet personally, and outside the presence or hearing of any employee or agent of Respondent Danaher, with any of the Relevant Employees; and
 - b. Make offers of employment to any of the Relevant Employees;
 - 3. Respondent Danaher shall not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the Relevant Employees, not offer any incentive to Relevant Employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Relevant Employees by the Acquirer;
 - 4. Respondent Danaher shall remove any impediments within its control that may deter any Relevant Employees from accepting employment with the Acquirer, including, but not limited to, removal of any non-compete or

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confidentiality provisions of employment or other contracts with Respondent Danaher that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to any Relevant Employees who receive an offer of employment from the Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondent Danaher to terminate the employment of any employee or prevent Respondent Danaher from continuing the employment of any employee;

5. Respondent Danaher shall provide Relevant Employees with reasonable financial incentives to continue in their positions, and as may be necessary to facilitate the employment of such Relevant Employees by the Acquirer. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondent Danaher, including regularly scheduled or merit raises and bonuses, regularly scheduled vesting of pension benefits, and additional reasonable incentives as may be necessary.
6. If the Acquirer has made a written offer of employment to any Key Employee, provide such Key Employee with reasonable financial incentives to accept a position with the Acquirer, including payment of an incentive equal to up to 3 months of such Key Employee's base salary to be paid only upon such Key Employee's completion of 1 year of employment with the Acquirer.

Provided, however, that for a period of 1 year from the Divestiture Date, Respondent Danaher, the Acquirer, and the Monitor will work together in good faith to determine whether any additional Relevant Employees should be identified as a Key Employee and subject to the provisions of this Paragraph V.A.6.

Provided further, however, the total number of Relevant Employees, including Key Employees, shall not exceed 43 employees.

B. Respondent Danaher shall:

1. For a period of 1 year from the Divestiture Date, not directly or indirectly solicit or induce, or attempt to solicit or induce, any Relevant Employee who has accepted an offer of employment with, or who is employed by, an Acquirer to terminate his or her employment relationship with the Acquirer.
2. For a period of 2 years from the Divestiture Date, not directly or indirectly solicit or induce, or attempt to solicit or induce, any Key Employee who has accepted an offer of employment with, or who is employed by, an Acquirer to terminate his or her employment relationship with the Acquirer.

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Provided, however, a violation of this Paragraph V.B will not occur if:

1. The employee's employment has been terminated by the Acquirer;
2. Respondent Danaher advertises for employees in newspapers, trade publications, or other media not targeted specifically at any one or more of the employees of the Acquirer; or
3. Respondent Danaher hires an employee who has applied for employment with Respondent Danaher, provided that such application was not solicited or induced in violation of this Order.

VI. Hold Separate and Asset Maintenance

IT IS FURTHER ORDERED that:

- A. During the Hold Separate Period, Respondent Danaher shall continue to operate the Hold Separate Businesses as independent, ongoing, economically viable businesses and shall: (1) hold them separate and apart from Respondent Danaher's other businesses, (2) take no action to integrate the operations of the Hold Separate Businesses with other Danaher businesses; (3) take no action to coordinate the operations of the Hold Separate Businesses with any other business of Respondent Danaher other than back office services, such as IT services and administration of compensation and benefits, as long as the confidentiality provisions of Paragraph VII are complied with; and (4) vest them with all rights, powers, and authority necessary to conduct business in a manner consistent with the Order.
- B. Prior to the Acquisition Date, Respondent Danaher shall appoint Jeffrey Figg, Senior Vice President Finance for Pall, to oversee, subject to Respondent Danaher's Hold Separate Commitments to the European Commission, the operations of each Hold Separate Business and ensure Respondent Danaher's compliance with the Order during the Hold Separate Period. Mr. Figg shall serve during the Hold Separate Period and shall have no duties related to the GE Biopharma business during the Hold Separate Period.
- C. For the Divestiture Businesses during the Hold Separate Period, Respondent Danaher shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of each.
- D. During the Hold Separate Period, Respondent Danaher shall, subject to legal and regulatory requirements, operate the Divestiture Businesses in the ordinary course of business consistent with past practices, including:

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1. Maintaining the Divestiture Businesses in substantially the same condition (except for normal wear and tear) existing on December 18, 2019, and maintaining relations and good will with employees, suppliers, customers, landlords, creditors, agents, and others having business relationships with the Divestiture Businesses;
 2. Providing the Divestiture Businesses with sufficient financial and other resources to:
 - a. Operate the Divestiture Businesses Assets and the Divestiture Businesses at least at the current rate of operation and staffing and to carry out, at their scheduled pace, all business plans, sales and promotional activities in place prior to the date the Acquisition was announced;
 - b. Perform all maintenance to, and replacements or remodeling of, the assets of the Divestiture Businesses in the ordinary course of business and in accordance with past practice and current plans, and
 - c. Carry on such capital projects, physical plant improvements, and business plans as are already underway or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to, existing or planned renovation, remodeling, or expansion projects;
 3. Preserving the Divestiture Businesses Assets and the Divestiture Businesses as ongoing businesses; and
 4. Taking or failing to take any actions that would diminish the viability, competitiveness, and marketability of the Divestiture Businesses Assets or the Divestiture Businesses.
- E. Until such time as the Acquirer replicates the manufacture, assembly, testing, packaging, and selling of products related to Flow Kit Consumables in a manner that fulfills the Acquirer's worldwide demand, Respondent Danaher:
1. Shall take actions as are necessary to operate the equipment related to Flow Kit Consumables in the regular and ordinary course of business and in accordance with past practices and in a manner consistent with applicable laws and regulation; and
 2. Prevent the destruction, removal, wasting, deterioration, or impairment of the Flow Kit Consumables; and

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3. Shall not take any actions to reduce the availability of the services of the current officers, employees, and agents of Respondent Danaher required to operate and maintain the equipment related to Flow Kit Consumables.
- F. Until 12 months after the Divestiture Date, Respondent Danaher shall require that each sales or marketing employee who was employed by Pall Corporation prior to the Divestiture Date sign a confidentiality agreement that prohibits the employee from disclosing Confidential Business Information regarding the Divestiture Businesses and opportunities for the sale of products marketed by the Divestiture Businesses.
- G. Until 3 days after the Divestiture Date, Respondent Danaher shall continue the Special Sales Incentive Program and Clarifications to the Sales Incentive Program listed in non-public Appendix G, and shall provide Pall Corporation sales and marketing staff with written notification explaining the Special Sales Incentive Program and Clarifications to the Sales Incentive Program on or before the Acquisition Date. Written notification shall be reviewed and approved by the Monitor, and shall include a requirement that the recipient acknowledge receipt and confirm his or her understanding of the notification.

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

- A. Respondent Danaher shall:
1. Maintain the confidentiality, and prevent the disclosure of, Confidential Business Information regarding the Divestiture Businesses Assets and the Divestiture Businesses (“Confidential Divestiture Information”) by, *inter alia*:
 - a. Providing, disclosing or using Confidential Divestiture Information only as necessary to provide Transition Services to the Acquirer, supply Transition Products to the Acquirer, or comply with any legal or regulatory requirement, and
 - b. Requiring all employees and representatives who possess or are provided with Confidential Divestiture Information to execute non-disclosure agreements that prevent the use or disclosure of Confidential Divestiture Information for purposes not authorized by this Order;
 2. Institute procedures and requirements to ensure that the employees providing Transition Services or supplying Transition Products to the Acquirer do not provide, disclose, or otherwise make available, directly or indirectly, any Confidential Divestiture Information in contravention of the

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Orders and do not solicit, access, or use any Confidential Divestiture Information that they are prohibited from receiving for any reason or purpose;

3. Upon the request of the Acquirer, destroy any copies of Confidential Divestiture Information (other than electronic copies of Confidential Divestiture Information created as a result of automatic back-up procedures) within 30 days of such request *except* as otherwise agreed to between Respondent Danaher and the Acquirer or to the extent necessary to comply with applicable law; and
 4. Take all action necessary and appropriate to prevent access to, and the disclosure or use of, the Confidential Divestiture Information by or to any Person(s) not authorized to access, receive, and/or use such information pursuant to the terms of the Orders, including:
 - a. Establishing and maintaining appropriate firewalls, confidentiality protections, internal practices, training, communications, protocols, and system and network controls and restriction, and
 - b. Ensuring by other reasonable and appropriate means that the Confidential Divestiture Information is not shared with any employee of Respondent Danaher personnel engaged in any business that competes with one or more of the Divestiture Businesses.
- B. Not later than 30 days after the Divestiture Date, Respondent Danaher shall provide written notification of the restrictions on the use and disclosure of the Confidential Divestiture Information to all employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information. Respondent Danaher 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 Divestiture Date. Respondent Danaher shall provide a copy of the notification to the Acquirer. Respondent Danaher shall maintain complete records of all such notifications at Respondent Danaher's registered office within the United States of America. Respondent Danaher shall provide the Acquirer with copies of all certifications, notifications, and reminders sent to Respondent Danaher's personnel.

VIII. Monitor

IT IS FURTHER ORDERED that:

- A. Mazars LLP is appointed Monitor to ensure that Respondent Danaher expeditiously complies with all of its obligations and perform all of its responsibilities as required by the Order.

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- B. No later than one day after the Commission issues this Order, Respondent Danaher shall, pursuant to the Monitor Agreement, attached as Appendix D and Non-Public Appendix E (Compensation), transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities in a manner consistent with the purposes of this Order.
- C. The Monitor shall serve, without bond or other security, at the expense of Respondent Danaher, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Danaher, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission;
- D. Respondent Danaher shall provide the Monitor with the power and authority to monitor Respondent Danaher's compliance with the terms of this Order and the Divestiture Agreements, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission, including, but not limited to:
 - 1. Ensuring that Respondent Danaher expeditiously complies with all obligations and performs all responsibilities as required by this Order, and the Divestiture Agreements;
 - 2. Monitoring any transition services agreements; and
 - 3. Ensuring that Confidential Business Information is not received or used by Respondent Danaher, except as allowed in this Order;
 - 4. Subject to any demonstrated legally recognized privilege, full and complete access to Respondent Danaher's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent Danaher's compliance with their obligations under this Order and the Divestiture Agreements. Respondent Danaher shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent Danaher's compliance with this Order and the Divestiture Agreements;
 - 5. Provide the Monitor with copies of all reports Respondent Danaher is required to submit to the Commission or Commission staff pursuant to the Order.

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- E. The Monitor is an independent third party and not as an employee or agent of the Respondent Danaher or of the Commission;
- F. The Monitor's appointment shall last for such time as is necessary to monitor Respondent Danaher's compliance with the provisions of this Order and the Divestiture Agreements;
- G. Respondent Danaher shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 Monitor.
- H. In connection with its appointment by the Commission, the Monitor shall report in writing to the Commission evaluating reports Respondent Danaher has submitted to the Commission and describing Respondent Danaher's performance of its obligations under this Order. The Monitor shall submit a report to staff of the Commission one month after the Commission issues the Order, every 60 days thereafter, and at such other times as staff of the Commission may request.
- I. Respondent Danaher may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement so long as such agreement shall not restrict the Monitor's ability to provide information to the Commission or require the Monitor to inform Respondent Danaher of the substance of communications with the Commission.
- J. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants, to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondent Danaher, which consent shall not be unreasonably withheld. If Respondent Danaher has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within 10 days after notice by the staff of the Commission to Respondent Danaher of the identity of any proposed Monitor, Respondent Danaher shall be deemed to have consented to the selection of the proposed Monitor. Not later than ten 10 days after appointment of a substitute Monitor, Respondent Danaher shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and

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powers necessary to permit the Monitor to monitor Respondent Danaher's compliance with the terms of this Order and the Divestiture Agreements in a manner consistent with the purposes of this Order.

- L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order and the Divestiture Agreements.
- M. The Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to this Order.

IX. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If Respondent Danaher has not fully complied with the obligations imposed by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest any of the Divestiture Businesses and perform Respondent Danaher's other obligations 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 Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent Danaher shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph IX 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 Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent Danaher to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Danaher, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Danaher has not opposed, in writing, and stated in writing its reasons for opposing, the selection of any proposed Divestiture Trustee within ten 10 days after notice by the staff of the Commission to Respondent Danaher of the identity of any proposed Divestiture Trustee, Respondent Danaher 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, Respondent Danaher 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 effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order.

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- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph IX, Respondent Danaher 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 effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order;
 2. The Divestiture Trustee shall have one year after the date the Commission approves the trust agreement described herein to effectuate the required divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one year period, the Divestiture Trustee has submitted a plan to divest, or believes the divestitures can be achieved within a reasonable time, the divestiture period may be extended up to 2 times by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court;
 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 divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent Danaher shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent Danaher shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondent Danaher shall extend the time for divestiture under this Paragraph IX for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;
 4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Danaher's absolute and unconditional obligation to divest expeditiously and at no minimum price and in a manner and to an Acquirer approved by the Commission.
 5. If the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondent Danaher from among those approved by the Commission unless the Respondent Danaher fails to make a selection within 5 days after receiving notification of the Commission's approval;

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6. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent Danaher, 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 Respondent Danaher, 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 Respondent Danaher, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;
7. Respondent Danaher 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;
8. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order;
9. The Divestiture Trustee shall report in writing to Respondent Danaher and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture;
10. Respondent Danaher 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*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission; and
11. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, representatives, and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.

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- E. If the Commission determines that the 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 IX.
- F. 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 divestitures required by this Order.

X. Prior Approval and Prior Notice**IT IS FURTHER ORDERED** that:

- A. For a period lasting until 3 years after the Divestiture Date, Sartorius shall not sell, transfer or otherwise convey, directly or indirectly, any interest in the Pall Businesses to any Person without the prior approval of the Commission.
- B. For a period lasting until 3 years after the Divestiture Date, Sartorius shall not acquire any interest in the Prior Approval Business (as defined in non-public Appendix F) or any assets used in the Prior Approval Business without the prior approval of the Commission.
- C. For a 2 year period commencing 3 years after the Divestiture Date, Sartorius shall not, without providing prior notification to the Commission in the manner described in this Paragraph IX, acquire any assets of, or any financial, ownership, or interest in the Prior Approval Business.
 - 1. Said prior notification under this Paragraph shall be in the form of a letter submission with attachments, and shall contain the following:
 - a. A written description of the transaction, including the identification of the assets involved, Sartorius' plans for the Prior Notice Business; and how the acquired assets will be integrated into Sartorius' existing businesses;
 - b. The proposed acquisition agreement with all attachments or, if no agreement exists, a detailed term sheet for the proposed acquisition;
 - c. All recommendation or approval materials, including any analyses used to support those recommendations or approvals, relating to the proposed acquisition (including materials prepared by or for any board, management committee, or executive committee);
 - d. A description of the projected or likely effects of the transaction on revenues, operations, or capital expenditures; and

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- e. All other documents that would be responsive to Items 4(c) and 4(d) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 14 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, relating to the proposed transaction and not otherwise provided.
2. Sartorius shall verify the notification in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function, and shall attest that a contract, agreement in principle, or letter of intent to merge or acquire has been executed, and further attest to the good faith intention of Sartorius to complete the noticed transaction. Sartorius shall file an original and one copy of the notification only with the Secretary of the Commission, and need not make any filing to the United States Department of Justice. Notification is required from Sartorius and not from any other party to the transaction. No filing fee will be required for any such notification.
3. Sartorius shall provide prior notification to the Commission at least 30 days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Sartorius shall not consummate the transaction until 30 days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph X may be requested and, where appropriate, granted by letter from staff of the Bureau of Competition.

Provided, however, that prior notification shall not be required by this Paragraph X for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

XI. Compliance Reports

IT IS FURTHER ORDERED that:

A. Respondent Danaher shall:

1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date and of the Divestiture Date no later than 5 days after the occurrence of each; and
2. Submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.

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- B. Respondent Danaher shall file verified written reports (“compliance reports”) in accordance with the following:
1. Respondent Danaher shall submit interim compliance reports 30 days after the Order is issued, and every 30 days thereafter until Respondent Danaher has fully complied with the provisions of Paragraphs II and VI of the Order; annual compliance reports one year after the date this Order is issued, and annually for the next 9 years on the anniversary of that date; and additional compliance reports as the Commission or its staff may request;
 2. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent Danaher is in compliance with the Order. Conclusory statements that Respondent Danaher has complied with its obligations under the Order are insufficient. Respondent Danaher shall include in its reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondent Danaher has implemented or plans to implement to ensure that it has complied or will comply with each paragraph of the Order, a description of all substantive contacts or negotiations for the divestitures and the identities of all parties contacted.
 3. Respondent Danaher shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent Danaher’s obligations under the Order and provide copies of these documents to Commission staff upon request.
 4. Respondent Danaher shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondent Danaher shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondent Danaher shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

XII. Change in Respondent Danaher

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

- A. The dissolution of Danaher Corporation;

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- B. The acquisition, merger or consolidation of Danaher Corporation; or
- C. Any other change in Respondent Danaher, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XIII. Access

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

- A. Access, during business office hours of Respondent Danaher and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of Respondent Danaher related to compliance with this Order, which copying services shall be provided by Respondent Danaher at the request of the authorized representative of the Commission and at the expense of the Respondent Danaher; and
- B. To interview officers, directors, or employees of Respondent Danaher, who may have counsel present, regarding such matters.

XIV. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to ensure the continuation of the Divestiture Businesses as ongoing viable businesses engaged in the same business in which the assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in this matter.

XV. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

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NON-PUBLIC APPENDIX A

DIVESTITURE AGREEMENTS

[Redacted From the Public Version But Incorporated by Reference]

NON-PUBLIC APPENDIX B

EXCLUDED ASSETS

[Redacted From the Public Version But Incorporated by Reference]

NON-PUBLIC APPENDIX C

KEY EMPLOYEES

[Redacted From the Public Version But Incorporated by Reference]

Decision and Order

APPENDIC D**AMENDED AND RESTATED MONITOR AGREEMENT**

This Amended and Restated Monitor Agreement ("Monitor Agreement") entered into this 19th day of February 2020, by and between Mazars LLP ("Monitor"), who has been chosen to act as Monitor, and Danaher ("Danaher" or "Respondent") (Monitor and Respondent are each individually referred to herein as a "Party" and collectively referred to herein as the "Parties"), provides as follows:

WHEREAS, on February 25, 2019, Danaher entered into an Equity and Asset Purchase Agreement (the "GE Biopharma Purchase Agreement") with the General Electric Company ("GE") pursuant to which, upon the terms and subject to the conditions set forth in the GE Biopharma Purchase Agreement, Danaher will acquire GE's Biopharma business (the "Acquisition");

WHEREAS, it is expected that the United States Federal Trade Commission (the "Commission") and Respondent will enter into an Agreement Containing Consent Order, which includes a proposed Decision and Order (the "Order");

WHEREAS, the Order provides for the appointment of a Monitor to assure that Respondent complies with all of its obligations and performs all of its responsibilities required by the Order and the Divestiture Agreements;

WHEREAS, the Order further provides that Respondent shall execute an agreement, subject to prior approval of the Commission, conferring all the rights, powers, and authority necessary to permit the Monitor to perform its duties and responsibilities pursuant to the Order;

WHEREAS, this Monitor Agreement, although executed by the Monitor and Respondent, is not effective for any purpose, including but not limited to, imposing rights and responsibilities on Respondent or the Monitor, until this Monitor Agreement has been approved by the Commission;

WHEREAS, the Monitor is well versed in the operation of the Divestiture Businesses Assets and wishes to accept such appointment upon the terms and conditions stated herein; and

WHEREAS, the Parties to this Monitor Agreement intend to be legally bound.

NOW, THEREFORE, the Parties agree as follows:

1. Capitalized terms used herein and not specifically defined herein shall have the respective definitions given to them in the Order.

2. The Monitor shall have all of the powers, authority, and responsibilities Respondent is required to confer upon the Monitor by the Order, including, without limitation, the responsibility, consistent with the Order, for monitoring Respondent's compliance with its obligations under the Order and the Divestiture Agreements. The Monitor shall have the authority, in its sole discretion, to consult with third parties in the exercise of its duties under the

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Order and this Monitor Agreement; provided, that the Monitor shall not have the authority to execute any documents or enter into any agreements on behalf of Danaher, GE Biopharma or any of their affiliates.

3. In the performance of its functions and duties under this Monitor Agreement, the Monitor will perform its obligations hereunder in good faith, using its best efforts to perform these services in accordance with generally accepted industry standards.

4. If the Monitor becomes aware during the term of this Monitor Agreement that it has or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Monitor of any of its duties under this Monitor Agreement, the Monitor shall promptly inform Respondent and the Commission of any such conflict.

5. The Monitor shall have reasonable access, subject to any legally recognized privilege of Respondent, to Respondent's personnel, books, records, documents, facilities and technical information to the extent relating to the Respondent's compliance with its obligations under the Order, including its obligations related to the Divestiture Businesses Assets, as the Monitor may reasonably require to perform the services set forth herein, subject to the limitations contained in the Order. Such access shall include, inter alia, access to all relevant information related to the Divestiture Businesses Assets. Respondent shall cooperate with any reasonable request of the Monitor, including but not limited to complying with Monitor's requests for onsite visits and interviews with employees of Respondent. Respondent shall take no action to interfere with or impede the Monitor's ability to monitor Respondent's compliance with the Order and the Divestiture Agreements.

6. Respondent shall designate a senior employee(s) of Respondent to be a primary contact ("Primary Contact") for the Monitor and to notify the Monitor regarding any changes in the contact personnel. Respondent shall notify the Monitor of meetings and other critical events relating to the Divestiture Businesses Assets, the Order, or the Agreements, and provide any available minutes of such meetings to the Monitor.

7. Respondent shall provide and the Monitor shall evaluate the reports submitted by Respondent pursuant to the Order.

8. The Monitor shall report to the Commission pursuant to the terms of the Order and as otherwise requested by the Commission Staff.

9. Monitor shall be compensated by Respondent for its services under this Monitor Agreement, including all work in connection with the negotiation and preparation of this Monitor Agreement, pursuant to the fee schedule attached as Confidential Exhibit A for time spent in connection with the discharge of its duties under this Monitor Agreement and the Order. In addition, Respondent will pay all documented out-of-pocket expenses reasonably incurred by the Monitor in the performance of the Monitor's duties, including all fees and disbursements reasonably incurred by such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. Payments under this Paragraph 12 shall be made on a monthly basis until the Monitor ceases its activities under this Monitor Agreement. The Monitor shall provide Respondent with monthly invoices for time and expenses that include details and an explanation of all matters for which the Monitor submits an invoice to Respondent. Respondent shall pay such invoices

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within 30 days of receipt. The Monitor and Respondent shall submit any disputes about invoices to the Commission's Compliance Division for assistance in resolving such disputes.

10. Respondent hereby confirms its obligation to indemnify the Monitor (and all Persons retained by the Monitor) and hold the Monitor harmless against any liabilities arising out of the performance of the Monitor's duties, except to the extent that such liabilities result from the willful default, recklessness, gross negligence, or bad faith of the Monitor, its employees, agents or advisors.

11. In the event of a disagreement or dispute between Respondent and the Monitor, and in the event that such disagreement or dispute cannot be resolved by the Parties, either Party may seek the assistance of the Assistant Director of the Commission's Compliance Division, to resolve the issue. In the event that such disagreement or dispute cannot be resolved by the Parties, the Parties shall submit the matter to binding arbitration before the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Binding arbitration shall not be available, however, to resolve any disagreement or dispute concerning Respondent's obligations pursuant to any Order entered by the Commission.

12. The term of this Monitor Agreement shall continue until the latter of (i) the completion of all divestitures required by the Order, and (ii) the end of any Transition Services Agreement in effect with any Commission-Approved Acquirer; provided further, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Order. In the event that Monitor is no longer able to perform the duties described in this Monitor Agreement, Monitor may terminate this Monitor Agreement by providing Respondent 30 days written notice. In the event of such termination, Monitor shall cooperate with Respondent pursuant to Paragraph 15.

13. Upon termination of the Monitor's duties under this Monitor Agreement, the Monitor shall consult with the Commission's staff regarding disposition of any written and electronic materials (including materials that Respondent provided to the Monitor) in the possession or control of the Monitor that relate to the Monitor's duties, and the Monitor shall dispose of such materials, which may include sending such materials to the Commission's staff, as directed by the staff. In response to a request by Respondent to return or destroy materials that Respondent provided to the Monitor, the Monitor shall inform the Commission's staff of such request and, if the Commission's staff does not object, shall comply with the Respondent's request. Nothing herein shall abrogate the Monitor's duty of confidentiality, which includes an obligation not to disclose any non-public information that was obtained while acting as a Monitor.

14. Should the Commission appoint a substitute monitor pursuant to an Order to Maintain Assets or should the Monitor terminate this Monitor Agreement pursuant to Paragraph 13, the Monitor shall cooperate with Respondent and the substitute monitor in order to effect a prompt transition to the substitute monitor. Such cooperation shall include, but is not limited to, (i) the prompt return to Respondent of all confidential materials as required by the preceding Paragraph of this Monitor Agreement, and (ii) the provision of access to the Monitor and any

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personnel hired by the Monitor for interviews by Respondent and/or the substitute monitor for purposes of gathering relevant information relating to the Monitor's performance of its duties.

15. Any notices or other communication required to be given hereunder shall be deemed to have been properly given if sent by mail or e-mail to the applicable Party at its address below (or to such other address as to which such Party shall hereafter notify the other party):

If to the Monitor, to:

Justin Menezes
Mazars LLP
Tower Bridge House, St. Katharine's Way, London, E1W 1DD
Justin.Menezes@mazars.co.uk

If to Respondent, to:

Attila Bodi
Danaher Corporate Office
2200 Pennsylvania Avenue, NW
Suite 800W Washington, DC 20037
Attila.Bodi@danaher.com

16. The Monitor Agreement may not be assigned by Respondent or the Monitor without the prior written consent of the other Party and the Commission.

17. It is understood and agreed that the Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondent or the Commission in the undertaking of this Monitor Agreement and the Monitor shall exercise control over and employ its own means and methods of accomplishing the projects and tasks in performing services hereunder.

18. This Monitor Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

19. This Monitor Agreement contains the entire agreement between the Parties relating to the subject matter hereof and supersedes all previous negotiations, agreements, undertakings and representations, documents, minutes of meetings, letters or notices (whether oral or written) between the Parties and/or their respective affiliates with respect to the subject matter.

20. This Monitor Agreement shall not become binding until it has been approved by the Commission and the Order has been accepted for public comment. The Order shall govern this Monitor Agreement and any provisions herein that conflict or are inconsistent with such orders may be declared void by the Commission and any provision not in conflict shall survive and remain a part of this Monitor Agreement.

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21. This Monitor Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of New York.

22. For the avoidance of doubt, each of the Parties expressly acknowledges that the Non-Disclosure Agreement, dated as of November 16, 2019 (the "NDA"), by and between the Parties, shall apply to all Confidential Information (as defined in the NDA) provided by Danaher to the Monitor in connection with the Monitor Agreement.

23. This Monitor Agreement amends and restates, in its entirety, and replaces, the prior Monitor Agreement entered into the 13 day of February 2020.

(Signature Page Follows)

Decision and Order

IN WITNESS WHEREOF, the parties hereto have executed this Monitor Agreement as of the date first above written.

Respondent:

By 

Name: Attila Bodi

Title: Vice President and Chief Counsel

Monitor:

By: 

Name: Justin Menezes

Title: Partner

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NON-PUBLIC APPENDIX E

MONITOR COMPENSATION

[Redacted From the Public Version But Incorporated by Reference]

NON-PUBLIC APPENDIX F

**PRIOR APPROVAL BUSINESS
(NON-PUBLIC EVEN AS TO RESPONDENTS)**

[Redacted From the Public Version But Incorporated by Reference]

NON-PUBLIC APPENDIX G

**SPECIAL SALES INCENTIVE PROGRAM
AND
CLARIFICATIONS TO THE SALES INCENTIVE PROGRAM**

[Redacted From the Public Version But Incorporated by Reference]

ANALYSIS OF CONSENT ORDERS TO AID PUBLIC COMMENT

INTRODUCTION

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Danaher Corporation (“Danaher”) designed to remedy the anticompetitive effects resulting from Danaher’s proposed acquisition of the GE Biopharma business of General Electric Company’s (“GE”) GE Healthcare Life Sciences division. Under the terms of the proposed Consent Agreement, Danaher is required to divest all of the rights and assets related to the following products to Sartorius AG (“Sartorius”):

Analysis to Aid Public Comment

(1) microcarrier beads; (2) conventional low-pressure liquid chromatography (“LPLC”) columns; (3) conventional LPLC skids; (4) single-use LPLC skids; (5) three affected chromatography resins; (6) LPLC continuous chromatography systems; (7) single-use TFF systems; and (8) label-free molecular characterization instruments.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the comments received and decide whether it should withdraw, modify, or make the Consent Agreement final.

Under the terms of the Equity and Asset Purchase Agreement dated February 25, 2019, Danaher will acquire the GE Biopharma business in exchange for \$21.4 billion (the “Acquisition”). The Commission’s Complaint alleges 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 substantially lessening competition in the markets for: (1) microcarrier beads; (2) conventional low-pressure liquid chromatography (“LPLC”) columns; (3) conventional LPLC skids; (4) single-use LPLC skids; (5) three affected chromatography resins; (6) LPLC continuous chromatography systems; (7) single-use TFF systems; and (8) label-free molecular characterization instruments. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that otherwise would be lost in these markets as a result of the proposed Acquisition.

THE PARTIES

Headquartered in Washington, DC, Danaher is a leading global manufacturer of professional, medical, industrial, and commercial products and services through more than twenty operating companies. Danaher sells bioprocessing products primarily through its wholly owned subsidiary Pall Corporation (“Pall”), including instruments and consumables that support research, discovery, process development, and manufacturing workflows of biopharmaceutical drugs. Danaher sells other life science instruments, including molecular characterization used primarily in biopharmaceutical research applications, through its Molecular Devices, LLC operating company.

GE is a global conglomerate headquartered in Boston, Massachusetts. GE Biopharma is a division of GE Healthcare Life Sciences that manufactures and sells instruments, consumables, and software that support the research, discovery, process development, and manufacturing workflows of biopharmaceutical drugs.

PRODUCTS AND MARKET STRUCTURES

I. Microcarrier Beads

Microcarrier beads are used in cell culture bioprocessing. They provide a surface for the anchorage of dependent cells to attach and grow in cell culture vessels and bioreactors. Danaher and GE are the two leading global suppliers of microcarrier beads and are each other’s closest competitors. The only other significant supplier of microcarrier beads is Corning, Inc., which is

Analysis to Aid Public Comment

substantially smaller than GE, the dominant supplier. The market for microcarrier beads is highly concentrated. The parties have a combined market share of greater than 70 percent. The Acquisition would increase concentration in the microcarrier bead market substantially and reduce the number of major suppliers from three to two.

II. Conventional Low-Pressure Liquid Chromatography Columns

LPLC columns separate wanted from unwanted molecules by using a liquid or gaseous phase to carry the cell mass through an adsorbent serving as a stationary phase. Conventional LPLC columns are containers that hold chromatography resins used as the adsorbent during the stationary phase. These columns are made of glass, stainless steel, acrylic glass, or plastic. This market is highly concentrated, with only four main suppliers, including Danaher and GE. The parties have a combined market share of greater than 45 percent. Further, Danaher and GE are two of very few suppliers that offer larger, process-scale conventional LPLC columns, which is a segment of the market that is even more concentrated. Other remaining chromatography suppliers consist of fringe of firms, each of which account for a small share of the market.

III. Conventional Low-Pressure Liquid Chromatography Skids

Conventional LPLC skids control the flow of liquid in the chromatography process. Conventional LPLC skids contain a system of pumps, valves, sensors, tubing, electronic components, software, and flow paths composed of multi-use components. GE is the leading supplier of conventional LPLC skids with a market share of over 30 percent. Danaher and GE currently compete directly for sales in the market for conventional LPLC skids, and there are few other significant suppliers. The Acquisition would substantially increase concentration in the market for conventional LPLC skids.

IV. Single-Use Low Pressure Liquid Chromatography Skids

Single-use LPLC skids control the flow of liquid in the chromatography process and have the same function as conventional LPLC skids except that the flow path is composed of single-use components. As is the case for conventional ones, GE is the dominant supplier of single-use LPLC skids. According to market participants, in addition to GE and Danaher are two of only three significant suppliers. The only other suppliers are fringe firms with few sales. Danaher and GE have a combined market share of greater than 80 percent for single-use LPLC skids.

V. Chromatography Resins

Chromatography resins are chemically treated consumables that constitute the stationary phase of the LPLC process. The parties both supply resins, although GE has a broad portfolio of resins while Danaher has more limited offerings. Each resin type differs in its chemical characteristics and features, and specific purification and production steps require different resins for the processing of particular molecules. Because of their distinct attributes and uses, each type of resin appears to constitute a distinct antitrust market. The parties have competitively significant overlaps in three resin markets: affinity resins, ion exchange resins, and mixed mode resins. Affinity resins use binding interactions between a ligand and its binding partner to capture the

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target molecule. Ion exchange resins separate molecules based on their total electric charge. Mixed mode resins use matrices functionalized with ligands capable of multiple interactions that make this type of resin useful to purify target proteins when other methods fail.

Danaher and GE are two of a limited number of competitors in the markets for affinity, ion exchange, and mixed mode resins. Similar to the markets for chromatography hardware, GE is dominant in chromatography resins, holding market shares of between 65 and 73 percent, 57 and 65 percent, and 56 and 64 percent in affinity, ion exchange, and mixed mode resins, respectively, while Danaher's market share is significant but no greater than ten percent in each resin market.

VI. Low-Pressure Liquid Chromatography Continuous Chromatography Systems

A LPLC continuous chromatography system consists of a skid and columns that functions by regulating the flow of resins through the affixed columns in a continuous process that, for some uses, provides greater efficiency and cost savings. The parties, however, appear to be the leading suppliers in the market. Currently, Danaher has approximately 28 percent market share and GE has approximately 14 percent share. Only three other suppliers compete in this market, and the combined firm would have a market share of over 40 percent.

VII. Single-Use Tangential Flow Filtration Systems

Single-use TFF systems control the filtration process, which removes unwanted molecules during the cell growth phase of the bioprocessing workflow by running liquids through porous membranes. Single-use TFF systems include sensors, valves, safety and security items, software, and network communication hardware, as well as flow kits, manifolds, and pumps composed of single-use components. Customers typically use TFF for cell clarification and for diafiltration, concentration, and microfiltration. TFF systems are configurable as conventional or single-use platforms. With single-use TFF systems, suppliers sell disposable flow kits (single-use tubing) that are used as a consumable. In contrast, conventional TFF systems are made with stainless steel and must be cleaned and validated after each use. Customers typically do not switch between single-use and conventional TFF systems, and they do not view other types of filtration systems as an economic or practical substitute for single-use TFF systems. Danaher and GE are two important competitors in the market for single-use TFF systems. GE's system has gained share since recently entering the market and currently competes closely with Danaher's system. The parties have a combined share of the single-use TFF filtration systems market of more than 35 percent.

VIII. Label-Free Molecular Characterization Instruments

Label-free molecular characterization instruments characterize protein binding interaction and protein concentration based on measurement of the optical, calorimetric, electrical, acoustic, and other physical reactions to various stimuli. Researchers use these instruments for a number of applications, including drug discovery and other biological research. Label-free molecular characterization instruments are a distinct relevant product market within the broader universe of molecular characterization instruments. By their own estimates Danaher has approximately 23 percent share and GE has about 39 percent leaving the combined firm with share greater than 60

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percent. The remainder of the market is highly fragmented and consists of less established instrument manufacturers and firms offering niche products.

COMPETITIVE EFFECTS OF THE ACQUISITION

The proposed Acquisition would likely result in substantial competitive harm to consumers in the markets for microcarrier beads; conventional LPLC columns; conventional LPLC skids; single-use LPLC skids; three chromatography resins; LPLC continuous chromatography systems; single-use TFF systems; and label-free molecular characterization. The parties are two of few significant suppliers of these products worldwide. Eliminating the head-to-head competition between Danaher and GE in these concentrated markets would allow the combined firm to exercise market power unilaterally, likely resulting in higher prices, reduced innovation, and less choice for consumers.

ENTRY CONDITIONS

De novo entry in the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the proposed Acquisition. Entry into each of the relevant product markets requires a significant amount of time and resources. In each relevant market, a new entrant would need to develop products with high levels of performance and reliability to establish the brand recognition necessary to compete effectively due to the premium customers place on suppliers' track records and reputations for reliable, high-quality products. Attaining requisite technological expertise and intellectual property often prevents suppliers from developing new products in the relevant markets. These barriers can delay the launch of new products and prevent existing suppliers of other equipment from developing new projects. Moreover, a potential entrant must establish a sufficient sales force that offers high-quality technical support and is capable of establishing relationships with customers. Such development efforts are difficult, time-consuming, and expensive, and often fail to result in a competitive product reaching the market.

THE CONSENT AGREEMENT

The Consent Agreement eliminates the competitive concerns raised by the proposed Acquisition by requiring Danaher to divest its microcarrier beads; chromatography hardware including conventional LPLC chromatography columns, conventional LPLC chromatography skids, and single-use LPLC chromatography skids; three chromatography resins; LPLC continuous chromatography systems; single-use TFF filtration systems; and label-free molecular characterization instruments to Sartorius. Danaher must divest all assets and rights to research, develop, manufacture, market, and sell these products, including all related intellectual property and other confidential business information, manufacturing technology, existing inventory, and all related agreements to manufacture and distribute the products. Additionally, to ensure that the divestiture is successful and to maintain continuity of supply, the proposed Order requires Danaher to supply Sartorius with these products for a limited time while Sartorius establishes its own manufacturing capability. Further, the proposed Order requires Sartorius to seek the Commission's approval in the event that it seeks to sell certain divested assets or acquire certain assets that compete with the divested assets for a period of three years. The provisions of the

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Consent Agreement ensure that Sartorius becomes an independent, viable, and effective competitor to maintain the competition that currently exists.

Based in Göttingen, Germany, Sartorius is a leading provider of instruments, manufacturing systems, and associated consumables for the life sciences industry including bioprocessing equipment used for drug discovery, development, and commercialization. Sartorius's existing biopharma business includes products that are highly complementary to the divestiture assets. Sartorius has the expertise, worldwide sales infrastructure, and resources to restore the competition that otherwise would have been lost due to the proposed Acquisition.

Danaher must accomplish the divestitures no later than 45 days after consummating the proposed Acquisition or ten days after receiving all regulatory approvals necessary to consummate the divestiture. Until Danaher completes the divestiture, the proposed Order requires Danaher to hold separate the entire Pall operating company and the molecular characterization business, as well as to maintain the divested assets. Danaher is also required to submit compliance reports to staff and to the proposed monitor demonstrating compliance with these asset maintenance provisions.

If the Commission determines that Sartorius is not an acceptable acquirer, or that the manner of the divestitures is not acceptable, the proposed Order requires Danaher to unwind the sale of rights and assets to Sartorius and then divest the affected products to a Commission-approved acquirer within six months of the date the Order becomes final. To ensure compliance with the Order, the Commission has agreed to appoint a Monitor to ensure that Danaher complies with all of its obligations pursuant to the Consent Agreement and to keep the Commission informed about the status of the transfer of the product rights and assets to Sartorius. The proposed Order further allows the Commission to appoint a trustee in the event that Danaher fails to divest the products as required.

The purpose of this analysis is to facilitate public comment on the 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

**AXON ENTERPRISE, INC.,
AND
SAFARILAND, LLC**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

*Docket No. 9389; File No. 181 0162
Complaint, January 3, 2020 – Decision, June 11, 2020*

This consent order addresses the \$30 million acquisition by Axon Enterprise, Inc. of certain assets of Safariland, LLC. The complaint alleges that the merger violated Section 7 of the Clayton Act, and Section 5 of the Federal Trade Commission Act by substantially lessening competition in the market for body-worn camera systems in large metropolitan police departments. The complaint further alleged that the parties' agreements, including several non-compete and customer non-solicitation provisions, barred Safariland from competing with Axon now and in the future on all of Axon's products, limited solicitation of customers and employees by either company, stifled potential innovation or expansion by Safariland, substantially lessened actual and potential competition and were not reasonably limited to protect a legitimate business interest. The consent order enjoins Safariland from entering into any agreement with Axon that incorporates the language or substance of the agreement provisions the complaint alleges are anticompetitive, which were rescinded by the parties since the complaint issued.

Participants

For the Commission: J. Alexander Ansaldo, Llewellyn Davis, Mika Ikeda, Nicole Lindquist, Lincoln Mayer, Jennifer Milici, Merrick Pastore, Blake Risenmay, Z. Lily Rudy, Connor B. Shively, and Steven L. Wilensky.

For the Respondents: Caroline L. Jones, Joseph Ostoyich, and Christine Ryu-Naya, Baker Botts LLP; Debra R. Belott, Aaron M. Healey, Michael H. Knight, Julia E. McEvoy, and Jeremy P. Morrison, Jones Day; and Lee K. Van Voorhis, Jenner & Block.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by the FTC Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Axon Enterprise, Inc., ("Respondent Axon") acquired VieVu, LLC ("VieVu") from Safariland, LLC ("Respondent Safariland"), and executed agreements in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows: