

## III

*It is further ordered That:*

A. Respondent shall divest, absolutely and in good faith, within nine (9) months of the date this Order becomes final, either the Beraprost Assets or Trental® Assets.

B. Respondent shall divest the Beraprost Assets or Trental® Assets only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Beraprost Assets or Trental® Assets is to ensure continued competition between Trental® and Beraprost, in the same manner in which Trental® and Beraprost would compete absent the Merger, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

C. The time period for divestiture pursuant to this Paragraph III of this Order shall be tolled if and when Respondent:

1. Provides to the Commission objective evidence, including, but not limited to, results of clinical trials, indicating that, based on a compound's medical profile, and through no fault of Respondent, the Beraprost Assets are not viable or marketable; and
2. Petitions the Commission to modify this Order, pursuant to section 5(b) of the FTC Act and § 2.51 of the Commission's rules of practice, based on the circumstances described in Paragraph III.C.1 of this Order.

This tolling of the time period for divestiture shall end when the Commission rules on Respondent's petition to modify this Order.

## IV

*It is further ordered That:*

A. Respondent shall divest, absolutely and in good faith, within nine (9) months of the date this Order becomes final, the Mesalamine Assets.

B. Respondent shall divest the Mesalamine Assets only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Mesalamine Assets is to ensure continued competition between Hoechst's mesalamine and MMD's mesalamine, in the same manner in which these compounds would compete absent the Merger, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

## V

*It is further ordered That:*

A. Respondent shall divest, absolutely and in good faith, within nine (9) months of the date this Order becomes final, the Rifampin Assets.

B. Respondent shall divest the Rifampin Assets only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Rifampin Assets is to ensure continued competition between Hoechst's rifampin and MMD's rifampin, in the same manner in which these compounds would compete absent the Merger, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

## VI

*It is further ordered That:*

A. Upon reasonable notice and request from the Acquirer(s) to Hoechst, Hoechst shall provide information, technical assistance and advice to the Acquirer(s) with respect to any assets divested pursuant to this Order such that the Acquirer(s) will be capable of continuing all applicable research, development and manufacturing. Such assistance shall include reasonable consultation with knowledgeable employees of Hoechst and training at the Acquirer's facility for a period of time sufficient to satisfy the Acquirer's management that its personnel are adequately knowledgeable about the assets divested pursuant to this Order. However, Respondent shall not be required to continue providing such assistance for more than twelve (12) months after divestiture of such assets. Respondent may require reimbursement from the Acquirer(s) for all of its own direct costs incurred in providing the services required by this Subparagraph. Direct costs, as used in this Subparagraph, means all actual costs incurred exclusive of overhead costs. If an Acquirer hires any of Respondent's officers, directors, agents, or employees whose work relates to a divested asset being acquired by the Acquirer, Respondent shall waive any confidentiality or non-competition employment rights relating to assets divested pursuant to this Order that Respondent has against such employee.

B. Pending divestiture of the assets to be divested pursuant to this Order, Respondent shall:

1. Take such actions as are necessary to prevent the destruction, removal, wasting, deterioration or impairment of the assets to be divested pursuant to this Order, except for ordinary wear and tear; and

2. Maintain research and development of the assets required to be divested by this Order, at the levels planned by either Hoechst or MMD for such assets as of June 1, 1995.

C. Hoechst shall maintain the physical assets, if any exist, necessary to manufacture Trental®, Beraprost, mesalamine and rifampin, until Respondent's obligations pursuant to Paragraphs III, IV, V, VI and VII of this Order have been fulfilled. The maintenance of physical assets described in this subparagraph shall not exceed two (2) years following divestitures pursuant to Paragraphs III, IV and V of this Order.

D. Respondent shall obtain from each Acquirer a certification of the Acquirer's good faith intention to obtain in an expeditious manner all necessary FDA approvals to manufacture and sell in the United States the assets to be divested pursuant to this Order and a commitment by the Acquirer to use reasonable diligence to continue to research and develop the assets to be divested pursuant to this Order for sale in the United States.

## VII

*It is further ordered That:*

A. If Respondent fulfills its obligations pursuant to this Order by divesting assets relating to a product for which the FDA has issued either approval of a NDA or an ANDA (hereinafter Divested Product), Respondent shall execute an Agreement (hereinafter Divestiture Agreement) with the Acquirer of such Divested Product.

B. Each Divestiture Agreement shall include the following and Respondent shall commit to satisfy the following:

1. Respondent shall Contract Manufacture and deliver to the Acquirer in a timely manner the requirements of the Acquirer for the Divested Product at Respondent's or MMD's Cost for a period not to exceed five (5) years from the date the Divestiture Agreement is approved, or six (6) months after the date the Acquirer obtains all necessary FDA approvals to manufacture the Divested Product for sale in the United States, whichever is earlier.

2. Respondent shall commence delivery of the Divested Product to the Acquirer within two (2) months from the date the Commission approves the Acquirer and the Divestiture Agreement.

3. After Respondent commences delivery of the Divested Product to the Acquirer pursuant to Paragraph VII.B.2 of this Order, all inventory of the Divested Product produced by Respondent for the U.S. market at the facility that produced such Divested Product, regardless of the date of its