

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act* R.S.C. 1985, c. C-35 as amended;

AND IN THE MATTER OF the acquisition by Johnson & Johnson of the Consumer Healthcare Business of Pfizer Inc.;

AND IN THE MATTER OF filing and registration of a Consent Agreement, pursuant to section 105 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

- and -

JOHNSON & JOHNSON

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE REGISTERED / ENREGISTRÉ FILED / PRODUIT CT-2006-011 December 20 , 2006 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 0004

CONSENT AGREEMENT

WHEREAS Johnson & Johnson (“J&J”) has entered into an agreement to acquire the Consumer Healthcare Business of Pfizer Inc. (“Pfizer”), pursuant to the stock and asset purchase agreement between Pfizer and J&J dated as of June 25, 2006 (the “Transaction”);

AND WHEREAS the Commissioner of Competition (the “Commissioner”) has concluded that the Transaction is likely to lessen competition substantially in the supply of zinc oxide based diaper rash treatment products in Canada;

AND WHEREAS the Commissioner is satisfied that this Consent Agreement (“Agreement”) will be sufficient to ensure that a substantial lessening and/or prevention of competition will not result from the completion of the Transaction as it relates to zinc oxide based diaper rash treatment products in Canada;

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AND WHEREAS the Commissioner is currently of the view that grounds do not exist to apply to the Tribunal under section 92 in regard to other product markets in which J&J and Pfizer compete;

AND WHEREAS J&J does not admit the conclusions of the Commissioner regarding the likely competitive effects of the Transaction as it relates to zinc oxide based diaper rash treatment products in Canada but consensually attorns to the jurisdiction of the Competition Tribunal for purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement;

AND WHEREAS the Commissioner and J&J agree to immediate registration of this Agreement;

NOW THEREFORE J&J and the Commissioner have agreed to the terms of this Agreement as follows:

I. DEFINITIONS

1. For the purposes of this Agreement, the following capitalized terms have the following meanings:
 - (a) “Act” means the *Competition Act*, R.S.C., 1985, c. C-34, as amended;
 - (b) “Affiliate” has the meaning given to it in subsection 2 (2) of the Act;
 - (c) “Agreement” means this Consent Agreement entered into by J&J and the Commissioner pursuant to section 105 of the Act;
 - (d) “Closing Date” means the date on which the Transaction is substantially completed;
 - (e) “Commissioner” means the Commissioner of Competition appointed pursuant to section 7 of the Act;
 - (f) “Confidential Zincofax Information” means competitively sensitive or proprietary information not independently known to a Person from sources other than the entity to which the information pertains including, without limiting the generality of the foregoing, any and all information pertaining to the operation of the Zincofax Business and any Zincofax Assets to be divested pursuant to this Agreement including, but not limited to, manufacturing, operations and financial information, operating costs and revenues, customer lists, price lists, marketing methods, patents, technologies, processes or other trade secrets;

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- (g) “Divest” means to implement any Divestiture pursuant to this Agreement;
- (h) “Divestiture” means the sale, transfer, assignment, or other disposal of the Zincofax Assets, such that J&J will have no further direct or indirect interest except as permitted herein or upon the consent of the Commissioner;
- (i) “Divestiture Agreement” means any agreement(s) between J&J and a Purchaser to accomplish the Divestiture of the Zincofax Assets contemplated by Part IV of this Agreement, or any agreement entered into by the Divestiture Trustee to accomplish the Divestiture of the Zincofax Assets contemplated by Part VI;
- (j) “Divestiture Trustee” means David Painter and LECG, and any employees, agents or other persons acting for or on behalf the Divestiture Trustee;
- (k) “Divestiture Trustee Sale” means the divestiture to be conducted by the Divestiture Trustee pursuant to Part VI of this Agreement;
- (l) “Divestiture Trustee Sale Period” means the period beginning on the day following the expiry of the Initial Sale Period and ending 6 months after the expiry of the Initial Sale Period, subject to extension in the sole discretion of the Commissioner;
- (m) “Initial Sale Period” means the period [beginning on January 20, 2007 and ending on May 20, 2007]¹, subject to extension by agreement of the Commissioner and J&J. In particular, the Commissioner may consider extending this period if J&J can establish that a prospective sale is imminent or if it has entered into an agreement in principle with a prospective purchaser and the closing of such sale would take place following the Initial Sale Period;
- (n) “J&J” means Johnson & Johnson, a New Jersey corporation;
- (o) “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity;
- (p) “Pfizer” means Pfizer Inc., a Delaware corporation;
- (q) “Purchaser” means any Person who purchases any of the Zincofax Assets in accordance with any procedure for Divestiture set out in this Agreement;

¹ Previously confidential.

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- (r) “Transaction” has the meaning described in the recitals to this Agreement;
- (s) “Tribunal” means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.), as amended;
- (t) “Zincofax Assets” means any right, title, and interests in and to all the assets directly relating to the Zincofax Business including, but not limited to:
 - (i) all personal property;
 - (ii) all inventories;
 - (iii) all Canadian intellectual property, including trademarks, formulations, trade secrets, know-how, techniques, data, practices, methods and other confidential or proprietary technical business information, and all rights in any jurisdiction to limit the use or disclosure thereof;
 - (iv) all rights of Pfizer and its Affiliates under any contract;
 - (v) all pending and issued governmental approvals, registrations, consents, licences, permits, waivers, or other authorizations held by Pfizer and its Affiliates, including foreign equivalents;
 - (vi) all rights under any warranty and guarantee;
 - (vii) all items of prepaid expense; and
 - (viii) all books, records, and files, including customer lists, and sales and pricing data; and
- (u) “Zincofax Business” means the business of supplying Zincofax brand diaper rash treatment products to be acquired by J&J from Pfizer in the Transaction.

II. APPLICATION

- 2. The provisions of this Agreement apply to:
 - (a) J&J, including its Affiliates;
 - (b) each officer, director, employee, agent or other Person acting for or on behalf of J&J and its Affiliates and any successors and assigns of J&J and its Affiliates or the Consumer Health Care business of Pfizer and its Affiliates;

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- (c) all other Persons acting in concert or participating with one or more of those listed in (a) and (b);
- (d) the Commissioner;
- (e) the Divestiture Trustee; and
- (f) the Purchaser and the Purchaser's successors and assigns.

III. MAINTENANCE OF THE ZINCOFAX ASSETS

- 3. Pending the completion of the Divestiture of the Zincofax Assets, J&J and its Affiliates shall take all necessary steps to preserve the competitive viability of the Zincofax Business, including giving all necessary instructions to:
 - (a) operate the Zincofax Business in compliance with all applicable laws;
 - (b) maintain all material licences, registrations, permits and approvals necessary for the operation of the Zincofax Business;
 - (c) maintain the competitiveness and customer base of the Zincofax Business;
 - (d) establish all prices, deductions, credits or allowances in relation to Zincofax in accordance with policies followed by Pfizer immediately prior to the Closing Date;
 - (e) honour all customer contracts and maintain quality and service standards for Zincofax customers at the same level as maintained by Pfizer over the past three years;
 - (f) maintain all material contracts without alteration except in the ordinary course of business;
 - (g) except with the approval of the Commissioner, ensure that the Zincofax Business does not engage in any other type of business;
 - (h) not communicate any Confidential Zincofax Information to anyone other than the Commissioner and those J&J employees who have a need to know this information in order to carry out J&J's obligations under this Agreement, except with the consent of the Commissioner;

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- (i) not take any action that materially and adversely affects the competitiveness, operations or financial status of the Zincofax Business; and
 - (j) maintain the marketing, sales, promotional and other activities of the Zincofax Business to the same level as maintained by Pfizer over the past three years.
4. In addition to the foregoing, J&J shall provide sufficient financial resources, to:
- (a) operate the Zincofax Business at least at current rates of operation and to carry on all business plans and promotional activities, including capital investments as committed to by Pfizer prior to the Closing Date;
 - (b) continue any additional expenditures for the Zincofax Business authorized prior to the Closing Date; and
 - (c) maintain the viability, competitive vigour, and marketability of the Zincofax Business.
5. J&J shall not directly or indirectly receive or have access to, or use or continue to use any Confidential Zincofax Information, except as may be necessary to comply with the terms of this Agreement or as permitted by this Agreement, and except to the extent that necessary information is exchanged in the course of consummating the Transaction, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating and meeting obligations under agreements to divest businesses or grant licences pursuant to the Consent Agreement, and as to the extent otherwise required by law.
6. J&J shall report in writing to the Commissioner (i) no later than 60 days after the completion of the Transaction and every 60 days thereafter until the Divestiture contemplated by this Agreement is completed, (ii) no later than 30 days from the date all obligations in this Agreement are satisfied, and (iii) at any other time as requested by the Commissioner or her staff, concerning J&J's compliance with this Agreement.

IV. DIVESTITURE OF THE ZINCOFAX ASSETS (INITIAL SALE PERIOD)

7. J&J unconditionally agrees to divest the Zincofax Assets. For greater certainty, any third party consents or other conditions required to facilitate a Divestiture are the responsibility of J&J, and any failure to obtain or satisfy any such consents or conditions shall be no basis on which to resile from J&J's unconditioned obligation to divest.
8. During the Initial Sale Period, J&J shall divest the Zincofax Assets absolutely and in good faith, to a Person approved by the Commissioner and in a manner, and pursuant to

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an agreement, approved by the Commissioner. J&J will be entitled to consult with the Commissioner with respect to the suitability of a prospective Purchaser(s) and the Commissioner will endeavour to provide her views as to the suitability of such Purchaser as quickly as possible. The Divestiture Trustee will have a similar entitlement during the Divestiture Trustee Sale Period.

9. J&J shall promptly commence the Divestiture process and use all reasonable commercial efforts to effect the Divestiture.
10. During the Initial Sale Period, J&J shall report to the Commissioner on a biweekly basis regarding the steps taken and the progress made by J&J in effecting the Divestiture. The Commissioner may stipulate information to be contained in such reports and may request additional information at any time for purposes of monitoring compliance with this Agreement. J&J shall respond within 5 days to any request by the Commissioner for additional information.
11. J&J shall immediately advise the Commissioner of any material changes in the value of the Zincofax Assets or any change in the status of the Zincofax Assets that could materially affect their market value or saleability;
12. If the Divestiture is not completed during the Initial Sale Period, the Divestiture shall be carried out by the Divestiture Trustee.
13. J&J shall not provide financing for all or any part of a Divestiture under this Agreement except with the consent of the Commissioner.

V. DIVESTITURE PROCEDURE

14. The Divestiture shall be completed on the following general terms, compliance with which is a matter for the Commissioner's determination alone:
 - (a) by sale, assignment, transfer, sale of shares or other disposition necessary to ensure that, by completion of the Divestiture, J&J has, directly or indirectly, no remaining title, right or interest in the Zincofax Assets;
 - (b) by way of disposition of the Zincofax Assets as a going concern;
 - (c) to a Purchaser who is at arm's length and who:
 - (i) shall effect the purchase with a demonstrated commitment to carrying on the Zincofax Business and competing effectively in the sale of diaper rash treatment products in Canada; and

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- (ii) shall have the managerial, operational and financial capability to compete effectively in the sale of diaper rash treatment products in Canada;
 - (d) by way of a public tender, bidding, or other procedure to allow a fair opportunity for one or more *bona fide* prospective Purchasers to offer to acquire the Zincofax Assets pursuant to the Agreement; and
 - (e) on usual commercial terms for transactions of the size and nature of the Divestiture, including reasonable and ordinary commercial representations and warranties.
15. J&J or the Divestiture Trustee shall notify any Person making a *bona fide* inquiry that the Divestiture is being made pursuant to this Agreement.
16. Subject to paragraph 17, J&J or the Divestiture Trustee, as applicable, shall provide all pertinent information to any prospective Purchaser with a *bona fide* interest in acquiring the Zincofax Assets, and permit any such prospective Purchaser to reasonably inspect the Zincofax Assets and all financial, operational or other non-privileged documents and information which may be relevant to the Zincofax Assets.
17. Access by a prospective Purchaser to the information identified in paragraph 16 shall be conditional on the execution of a confidentiality agreement typically used in the course of selling a business, the form of such agreement to be stipulated by J&J during the Initial Sale Period and by the Divestiture Trustee alone during the Divestiture Trustee Sale Period.
18. J&J shall notify the Commissioner of any negotiations with a prospective Purchaser that may lead to a sale and shall forthwith provide to the Commissioner a copy of any agreement between J&J and a prospective Purchaser, including any non-binding expression of intent.

VI. DIVESTITURE TRUSTEE SALE

19. If J&J has not effected a Divestiture 30 days before the expiration of the Initial Sale Period, the Divestiture Trustee shall be formally appointed.
20. The Divestiture Trustee shall execute a confidentiality agreement, in the form stipulated by the Commissioner, and refrain from communicating any Confidential Information to anyone except to the extent reasonably required to effect the Divestiture. J&J shall, immediately following the execution of such confidentiality agreement and prior to the expiry of the Initial Sale Period, provide the Divestiture Trustee complete access to all information relating to the Zincofax Assets.

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21. If J&J has not effected a Divestiture, immediately upon the expiration of the Initial Sale Period:
- (a) the terms in Confidential Schedule “A” shall apply;
 - (b) the Divestiture Trustee shall have exclusive authority, subject to oversight and approval by the Commissioner only, to control the Divestiture process and to accomplish the Divestiture;
 - (c) J&J will take no part in the Divestiture process and have no contact with prospective purchasers, except with the approval of the Commissioner;
 - (d) the Divestiture Trustee shall have full access to the personnel, books, records and facilities related to the Zincofax Assets to be divested or any other information deemed relevant by the Divestiture Trustee to effect the Divestiture, and J&J shall fully cooperate with and take no action to interfere with the Divestiture;
 - (e) J&J shall fully and promptly respond to all requests from the Divestiture Trustee, and shall identify an individual who shall have primary responsibility for responding to such requests;
 - (f) the Divestiture Trustee shall have sole authority to determine, and the power to obtain from J&J, the reasonable and ordinary commercial representations and warranties that J&J is in a position to make for the purpose of effecting the Divestiture;
 - (g) the Divestiture Trustee shall serve, without bond or other security, at the cost and expense of J&J on such reasonable customary terms and conditions as the Commissioner may set, and shall have the authority to employ, at the cost and expense of J&J, such consultants and counsel as considered necessary by the Divestiture Trustee to carry out its obligations;
 - (h) J&J shall indemnify and hold harmless the Divestiture Trustee 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 malfeasance, gross negligence or bad faith on the part of the Divestiture Trustee;
 - (i) if the Divestiture Trustee ceases to act or fails to act diligently or otherwise in accordance with this Agreement or any agreement between the Commissioner and

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the Divestiture Trustee, the Commissioner may appoint a substitute Divestiture Trustee and this Agreement shall apply to any substitute Divestiture Trustee appointed pursuant to this paragraph;

- (j) the Divestiture Trustee shall have no obligation to operate the Zincofax Assets; and
- (k) the Divestiture Trustee shall report in writing to the Commissioner on a biweekly basis concerning the Divestiture Trustee's efforts to accomplish the Divestiture, including information on the steps being taken by the Divestiture Trustee to effect the Divestiture, the identity of prospective Purchasers, the status of negotiations with such prospective Purchasers and any additional information requested by the Commissioner.

- 22. Any Divestiture proposed by the Divestiture Trustee is subject to approval by the Commissioner.
- 23. The Commissioner may, on notice to J&J, extend the Divestiture Trustee Sale Period at any time and as often as required.
- 24. The Divestiture Trustee's obligations and powers under this Agreement shall continue until the Divestiture is accomplished.

VII. COMPLIANCE

- 25. For the purpose of determining or securing compliance with this Agreement, subject to any valid claim to a legally recognized privilege, and upon written request, J&J shall permit any duly authorized representative of the Commissioner:
 - (a) upon a minimum of 2 days notice to J&J, access during office hours of J&J, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of J&J relating to compliance with this Agreement; and
 - (b) upon a minimum of 5 days notice to J&J, and without restraint or interference from J&J, to interview directors, officers or employees of J&J on matters relating to compliance with this Agreement.

VIII. DIRECTIONS

- 26. If the Divestiture Trustee Sale Period (including any extensions) has expired, or if the Commissioner is of the opinion that the Divestiture will not likely be completed prior to

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the expiry of the Divestiture Trustee Sale Period, the Commissioner may apply to the Tribunal for an order that other steps be taken to effect the Divestiture. [However, such order shall not include a requirement that assets other than either the Zincofax Assets or the Penaten Assets be sold.]² J&J agrees that the Tribunal has jurisdiction to grant such relief if required to give effect to this Consent Agreement.

27. As the Divestiture Trustee's primary obligation is to divest the Zincofax Assets to a Person approved by the Commissioner, J&J may only object to a Divestiture proposed by the Divestiture Trustee, or its terms and conditions, on the basis of malfeasance, gross negligence, or bad faith on the part of the Divestiture Trustee in executing its obligations under this Agreement. If J&J objects to a Divestiture proposed by the Divestiture Trustee, which may only occur after the Divestiture Trustee has proposed a Divestiture, J&J or the Commissioner may apply to the Tribunal for directions.
28. Any dispute as to the interpretation, application or implementation of this Agreement may be resolved by application to the Tribunal.

IX. NOTIFICATION

29. J&J shall provide a copy of the Agreement to each of its and its Affiliates' officers, employees, or agents having managerial responsibility for any obligations under the Agreement.
30. Notices, reports and other communications required or permitted pursuant to any of the terms of this Agreement, shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the parties:

1. If to the Commissioner:

Competition Bureau
Industry Canada
Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9
Attention: Senior Deputy Commissioner (Mergers)
Fax: (819) 954-0998

With a copy to:

² Previously confidential.

Competition Law Division
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9
Attention: Director, Competition Law Division
Fax: (613) 954-0964

2. If to J&J:

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7001
United States of America
Attention: Eric Harris, Assistant General Counsel
Fax: (723) 524-2788

With a copy to:

Blake, Cassels & Graydon LLP
Suite 2800, Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1A9
Attention: Calvin S. Goldman and Crystal Witterick
Fax: (416) 863-2653

X. DURATION

31. This Agreement is conditional on the completion of the Transaction and shall continue in effect until the Commissioner notifies the Tribunal in writing that the terms of this Agreement have been fulfilled.
32. The Divestiture contemplated by this Agreement shall be complete when all right, title and interest of J&J in the Zincofax Assets has been conveyed to a Purchaser pursuant to this Agreement.
33. Upon fulfillment of the terms and conditions of this Agreement, all confidential terms shall be made public.

XI. GENERAL

34. J&J agrees to the registration of the Agreement with the Tribunal.

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- 35. J&J and the Commissioner may amend this Agreement in any manner by agreement in writing.
- 36. The computation of any time periods contemplated by the Agreement shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21.
- 37. This Agreement constitutes the entire agreement between the Commissioner and J&J with respect to the Divestiture and supersedes all prior agreements.
- 38. Notwithstanding any term of this Agreement, nothing in this Agreement shall be construed to abrogate the notification obligations set out in Part IX of the Act.
- 39. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.

DATED this 19th day of December, 2006.

(signed) Sheridan Scott
Commissioner of Competition

(signed) Jerome A. Swindell
Johnson & Johnson
Per: Jerome A. Swindell
Senior Counsel

FILED AND REGISTERED BY the Tribunal, this day of December, 2006.

CONFIDENTIAL SCHEDULE "A"

If J&J has not effected a Divestiture, during the Divestiture Trustee Sale Period the following terms shall apply:

1. If the Divestiture Trustee is unable to sell the Zincofax Business within a period of 4 months following the expiration of the Initial Sale Period, the Divestiture Trustee shall, at the direction of the Commissioner, seek to divest either the Zincofax Business or the Penaten Business ("Penaten Business" defined as the business of supplying Penaten brand diaper rash treatment products in Canada), and the terms Confidential Zincofax Information, Zincofax Assets and Zincofax Business as used in sections I, IV, V, VI and VIII (other than in section 26) of this Agreement shall also be interpreted as appropriate in the context to mean Confidential Penaten Information, Penaten Assets or Penaten Business, with Penaten Assets defined as:

"Penaten Assets" means any rights, title, and interests in and to all the Canadian assets directly relating to the Penaten Business including, but not limited to:

- (a) all personal property;
- (b) all inventories;
- (c) all Canadian intellectual property, including trademarks, formulations, trade secrets, know-how, techniques, data, practices, methods and other confidential or proprietary technical business information, and all rights in Canada to limit the use or disclosure thereof;
- (d) all rights of J&J and its Affiliates under any contract;
- (e) all pending and issued governmental approvals, registrations, consents, licences, permits, waivers, or other authorizations held by J&J and its Affiliates;
- (f) all rights of J&J and its Affiliates under any warranty and guarantee;
- (g) all items of prepaid expense; and
- (h) all books, records, and files, including customer lists, and sales and pricing data.

For greater certainty, the Penaten Assets do not include manufacturing or other facilities outside Canada and intellectual property in jurisdictions other than Canada.

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2. In the event that the Divestiture Trustee receives an offer for both the Zincofax Business and the Penaten Business in accordance with (1) above, J&J shall have the right to select which of those businesses is to be divested, subject to the Commissioner's approval of the purchaser in accordance with this Agreement.

3. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favourable terms and conditions available at that time and, if necessary to effect the Divestiture in accordance with the terms of this Agreement, may sell the Zincofax Assets or the Penaten Assets, as applicable, at no minimum price. The Divestiture Trustee's opinion of what constitutes the most favourable terms and conditions is subject to approval by the Commissioner only.