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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
CEPHALON, INC., a corporation;	)	**Docket No. C-4121**
and	)	
CIMA LABS INC., a corporation.	)	

COMPLAINT

Pursuant to the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Cephalon, Inc. ("Cephalon"), a corporation subject to the jurisdiction of the Commission, has agreed to merge with Respondent CIMA LABS INC. ("Cima"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and 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. DEFINITIONS

1. "Asset Purchase Agreement" means the Agreement and Plan of Merger by and between Cephalon, Cima, and C MergerCo, Inc., dated November 3, 2003.

2. "Respondents" means Cephalon and Cima individually and collectively.

II. RESPONDENTS

3. Respondent Cephalon is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 145 Brandywine Parkway, West Chester, PA 19308. Cephalon, among other things, is engaged in the research, development, manufacture and sale of human pharmaceutical products.

4. Respondent Cima is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 10000 Valley View Road, Eden Prairie, MN 55344. Cima, among other things, is engaged in the research, development, manufacture, and sale of human pharmaceutical products.

5. Respondents are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and are corporations whose business is in or affects commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED ACQUISITION

6. On November 3, 2003, Cephalon and Cima entered into an Asset Purchase Agreement whereby Cephalon agreed to acquire, through its wholly-owned subsidiary C MergerCo, Inc., 100 percent of the issued and outstanding shares of Cima ("Acquisition"). Cephalon intends to pay consideration such that each issued and outstanding share of Cima common stock will be converted into the right to receive $34.00 in cash. The parties estimate the aggregate value of the transaction to be approximately $500 million. After the completion of the transaction, Cephalon will be the surviving corporate entity.

IV. THE RELEVANT MARKET

7. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture and sale of prescription drug products for the treatment of breakthrough cancer pain ("BTCP").

8. For the purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

V. THE STRUCTURE OF THE MARKETS

9. Cephalon dominates the market for the research, development, manufacture, and sale of prescription drug products for the treatment of BTCP with its product Actiq. Actiq is currently the only drug approved by the Food and Drug Administration ("FDA") for the treatment of breakthrough cancer pain. Cima is in Phase III of clinical development with its OraVescent fentanyl product, and it is the firm best positioned to next enter the market. Other firms that have undertaken efforts to develop BTCP products have either failed in their efforts or lag well behind Cima.

VI. ENTRY CONDITIONS

10. Entry into the relevant line of commerce described in Paragraph 7 would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. Developing and obtaining FDA approval for either generic or branded products takes at least two years due to substantial regulatory, technological, patent, and other intellectual property barriers.

VII. EFFECTS OF THE ACQUISITION

11. The effects of the Acquisition, if consummated, may be to lessen competition and tend to create a monopoly in the 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 potential competition between Cephalon and Cima in the market for the manufacture and sale of prescription drugs for the treatment of BTCP, thereby increasing the ability of the combined entity to unilaterally raise prices of BTCP products; (b) by increasing the likelihood that the combined entity would delay or forego the launch of Cima's OraVescent fentanyl, thereby delaying or eliminating the price competition that would have resulted from Cima's entry into the market for BTCP products; and (c) by reducing the likelihood of effective generic entry.

VIII. VIOLATIONS CHARGED

12. The Asset Purchase Agreement described in Paragraph 6 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

13. The Acquisition described in Paragraph 6, 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 twentieth day of September, 2004, issues its Complaint against said Respondents.

By the Commission, Commissioner Harbour and Commissioner Leibowitz not participating.

Donald S. Clark
Secretary

SEAL: