

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

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In the Matter of)	
)	
Novartis AG,)	Docket No. C-
)	
a corporation.)	
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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 Novartis AG (“Novartis”), a corporation subject to the jurisdiction of the Commission, has offered to acquire 67% of the outstanding shares of Eon Labs, Inc., a corporation subject to the jurisdiction of the Commission, from Santo AG (“Santo”), 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. RESPONDENT

1. Respondent Novartis is a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business located at Lichtstrasse 35, CH-4002 Basel, Switzerland. Respondent Novartis owns a variety of subsidiaries, including Sandoz Inc. which is engaged in the research, development, manufacture and sale of human generic pharmaceutical products in the United States.

2. Novartis 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 corporation 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.

II. THE ACQUIRED COMPANY

3. Santo Holding AG (“Santo”) is a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business located at Alte Landstrasse 106, CH-8702 Zollikon/Zurich.

4. Santo owns 67% of the outstanding stock of Eon Labs, Inc. (“Eon”). Eon is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its principal place of business located at 1999 Marcus Avenue, Lake Success, New York 11042. Santo, among other things, is engaged in the research, development, manufacture, and sale of human pharmaceutical products in the United States through Eon.

II. THE PROPOSED ACQUISITION

5. On February 20, 2005, Novartis and Santo entered into a Purchase Agreement and Sale of Stock whereby Novartis agreed to purchase 60 million shares of Eon from Santo for approximately \$1.72 billion in cash (“the Acquisition”). These shares represent approximately 67% of the outstanding stock of Eon. Further, Novartis has made a definitive agreement, approved by the Eon Board of Directors, to offer to acquire the remaining 31.9 million fully diluted shares of Eon for \$31.00 per share cash. With the closing of these transactions, Novartis would become the global leader in generic pharmaceuticals with combined pro forma 2004 sales of \$5.1 billion, and a portfolio of over 600 generic pharmaceutical products.

III. THE RELEVANT MARKETS

6. One of the relevant lines of commerce in which to analyze the effects of the Acquisition is the manufacture and sale of generic desipramine hydrochloride tablets. Desipramine hydrochloride is a tricyclic antidepressant. The branded desipramine product, Norpramin, does not offer any significant price pressure in the generic desipramine market other than setting a price ceiling that is currently many times higher than the generic pricing level. The brand price is essentially irrelevant with respect to the pricing of generic desipramine tablets. In contrast, the competition between producers of generic desipramine tablets has a direct and substantial effect on generic desipramine pricing.

7. A second relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture and sale of generic orphenadrine citrate ER tablets. Orphenadrine citrate is a muscle relaxant. The branded orphenadrine citrate product, Norflex, does not impact the pricing of generic orphenadrine citrate other than setting a price ceiling that is currently many times higher than the generic pricing level. In contrast, the competition between producers of generic orphenadrine citrate tablets has a direct and substantial effect on generic orphenadrine citrate pricing.

8. The third relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture and sale of generic rifampin oral capsules. Rifampin is indicated for the treatment of tuberculosis. The branded rifampin product, Rifadin, does not offer any significant price pressure in the generic rifampin oral capsule market other than setting a price ceiling that is currently many times higher than the generic pricing level. In contrast, the competition between producers of generic rifampin capsules has a direct and substantial effect on generic rifampin pricing.

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

IV. THE STRUCTURE OF THE MARKETS

10. The market for the manufacture and sale of generic desipramine hydrochloride tablets is highly concentrated. Only Novartis and Eon market all six strengths of generic desipramine hydrochloride tablets in the United States, and the only other firm marketing generic desipramine hydrochloride tablets is Watson Pharmaceuticals, Inc., which markets three of the six strengths.

11. The market for the manufacture and sale of generic orphenadrine citrate ER tablets is highly concentrated. Only Eon, Novartis and Impax Laboratories, Inc. (through its generics division, Global Pharmaceuticals) manufacture and market generic orphenadrine citrate ER tablets in the United States.

12. The market for the manufacture and sale of generic rifampin oral capsules is highly concentrated. Only Eon, Novartis and VersaPharm, Incorporated market generic rifampin oral capsules in the United States.

V. ENTRY CONDITIONS

13. Entry into each of the relevant product markets 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 United States Food and Drug Administration approval for the manufacture and sale of generic desipramine hydrochloride tablets, generic orphenadrine citrate ER tablets and generic rifampin oral capsules takes at least two years due to substantial regulatory, technological, and intellectual property barriers.

VI. EFFECTS OF THE ACQUISITION

14. The effects of the acquisition, if consummated, may be substantially to lessen competition or tend to create a monopoly in each of the relevant markets 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 Novartis and Eon;
- b. by increasing the likelihood that Novartis will be able to unilaterally exercise market power;
- c. by increasing the likelihood and degree of coordinated interaction between or among competitors; and
- d. by increasing the likelihood that consumers will pay higher prices.

VII. VIOLATIONS CHARGED

15. The Purchase Agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

16. 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 _____ day of _____, 2005, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: