

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

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In the Matter of)
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)
 SCHERING-PLOUGH CORPORATION,)
 a corporation)
) Docket No. C-4211
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_____)

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Schering-Plough Corporation (“Schering-Plough”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire certain assets and voting securities of Akzo Nobel N.V. (“Akzo Nobel”), 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 SCHERING-PLOUGH CORPORATION

1. Respondent Schering-Plough is a corporation organized, existing, and doing business under and by virtue the laws of the state of New Jersey, with its headquarters address at 2000 Galloping Hill Road, Kenilworth, New Jersey 07033-1310.

2. Respondent Schering-Plough is engaged in, among other things, the research, development, manufacture, distribution, and sale of animal health products, including live vaccines for the prevention and treatment of the Georgia 98 strain of infectious bronchitis virus in poultry, live vaccines for the prevention and treatment of fowl cholera due to *Pasteurella multocida* in poultry, and live vaccines for the prevention and treatment of *Mycoplasma gallisepticum* in poultry.

3. Respondent Schering-Plough is, and at all times 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

4. Akzo Nobel is a for-profit corporation organized, existing and doing business under and by virtue of the laws of The Netherlands, with its headquarters address at Velperweg 76, 6824 BM Arnhem, The Netherlands. Its principal place of business in the U.S. at 120 White Plains Road, Suite 300, Tarrytown, New York 10591-5522.

5. Organon Biosciences N.V. (“Organon Biosciences”) is a corporation organized, existing and doing business under and by virtue of the laws of The Netherlands, with its offices and principal place of business located at Wethouder van Eschstraat 1, 5342 AV Oss, The Netherlands. Organon Biosciences is a wholly owned subsidiary of Akzo Nobel.

6. Akzo Nobel, through its wholly-owned subsidiary, Organon Biosciences, is engaged in, among other things, the research, development, manufacture, distribution, and sale of animal health products, including live vaccines for the prevention and treatment of the Georgia 98 strain of infectious bronchitis virus in poultry, live vaccines for the prevention and treatment of fowl cholera due to *Pasteurella multocida* in poultry, and live vaccines for the prevention and treatment of *Mycoplasma gallisepticum* in poultry.

III. THE PROPOSED ACQUISITION

7. Pursuant to the terms of a Letter of Intent dated March 12, 2007 (the “Agreement”), Schering-Plough proposes to acquire 100 percent of the Organon BioSciences voting stock in a transaction valued at approximately \$14.4 billion (the “Acquisition”).

IV. THE RELEVANT MARKETS

8. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the acquisition are the research, development, manufacture, and sale of: (a) live vaccines for the prevention and treatment of the Georgia 98 strain of infectious bronchitis virus in poultry; (b) live vaccines for the prevention and treatment of fowl cholera due to *Pasteurella multocida* in poultry; and (c) live vaccines for the prevention and treatment of *Mycoplasma gallisepticum* in poultry.

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.

V. THE STRUCTURE OF THE MARKET

10. The relevant market for the manufacture, distribution, and sale of live vaccines for the prevention and treatment of the Georgia 98 strain of infectious bronchitis virus in poultry in the United States is highly concentrated when measured by the Herfindahl-Hirschman Index (“HHI”). Respondent Schering-Plough and Akzo Nobel are the only suppliers of live vaccines for the prevention and treatment of the Georgia 98 strain of infectious bronchitis virus in poultry in the United States. Schering-Plough is the market leader with Avimune IB98, while Intervet competes with its MILDVAC GA-98 product. The acquisition would create a monopoly by combining the only two companies with products on the market.

11. The relevant market for the manufacture, distribution, and sale of live vaccines for the prevention and treatment of fowl cholera due to *Pasteurella multocida* in poultry in the United States is highly concentrated when measured by the Herfindahl-Hirschman Index (“HHI”). Respondent Schering-Plough and Akzo Nobel are two of only three suppliers of live vaccines for the prevention and treatment of fowl cholera due to *Pasteurella multocida* in poultry in the United States. Akzo Nobel is the market leader with its CHOLERVAC-PM-1 product, while Schering-Plough is the second leading supplier with its PM-ONEVAC-C and M-NINEVAX products. Together, Schering-Plough and Akzo Nobel account for over eighty percent of the sales in this highly concentrated market. Accordingly, the Acquisition would significantly increase the concentration levels in the United States in the market for live vaccines for the prevention and treatment of fowl cholera due to *Pasteurella multocida* in poultry, leaving Schering-Plough as the dominant supplier.

12. The relevant market for the manufacture, distribution, and sale of live *Mycoplasma gallisepticum* vaccines in the United States is highly concentrated when measured by the Herfindahl-Hirschman Index (“HHI”). Respondent Schering-Plough and Akzo Nobel are two leading suppliers of live vaccines for the prevention and treatment of *Mycoplasma gallisepticum* in poultry in the United States. Akzo Nobel is the market leader with its MYCOVAC-L product, while Schering Plough competes with its MYCOVAC-L product. Together, they account for over seventy-two percent of the sales in this highly concentrated market. Accordingly, the Acquisition would significantly increase the concentration levels in the United States in the market for live vaccines for the prevention and treatment of *Mycoplasma gallisepticum* in poultry, leaving Schering-Plough as the dominant supplier.

VI. ENTRY CONDITIONS

13. Entry into any relevant line of commerce would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition set forth in Paragraph 14 below. Entry into any of these markets would require overcoming three major obstacles: lengthy development periods, USDA approval requirements, and customer acceptance. As a result, new

entry into any of these markets sufficient to achieve a significant market impact within two years is unlikely.

VII. EFFECTS OF THE ACQUISITION

14. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in 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 Respondent Schering-Plough and Akzo Nobel for the research, development, manufacture, and sale of live vaccines for the prevention and treatment of the Georgia 98 strain of infectious bronchitis virus in poultry, live vaccines for the prevention and treatment of fowl cholera due to *Pasteurella multocida* in poultry, and live vaccines for the prevention and treatment of *Mycoplasma gallisepticum* in poultry in the United States;
- b. by increasing the ability of the merged entity to raise prices unilaterally of live vaccines for the prevention and treatment of the Georgia 98 strain of infectious bronchitis virus in poultry, live vaccines for the prevention and treatment of fowl cholera due to *Pasteurella multocida* in poultry, and live vaccines for the prevention and treatment of *Mycoplasma gallisepticum* in poultry in the United States; and
- c. by reducing the merged entity's incentives to improve service or product of live vaccines for the prevention and treatment of the Georgia 98 strain of infectious bronchitis virus in poultry, live vaccines for the prevention and treatment of fowl cholera due to *Pasteurella multocida* in poultry, and live vaccines for the prevention and treatment of *Mycoplasma gallisepticum* in poultry in the United States.

VIII. VIOLATIONS CHARGED

15. The Acquisition described in Paragraph 7 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

16. The Acquisition described in Paragraph 7, 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 twenty-eighth day of December, 2007, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: