

Citizens for Voluntary Trade Citizens for Voluntary Trade

January 17, 2003

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Office of the Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Room 159-H
Washington, DC 20580

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Re: Comments of Citizens for Voluntary Trade to the proposed consent agreement in *In re Baxter International Inc. and Wyeth*, FTC Docket No. C-4068.

Dear Mr. Secretary:

On behalf of Citizens for Voluntary Trade, a nonprofit association, I am writing to oppose entry of the FTC's recently announced consent agreement with Baxter International, Inc., and Wyeth. Although both companies consented to the FTC's action, at least nominally, the Commission's case is defective on its face, and therefore entry of the consent agreement would *not* serve the public interest.

As is the FTC's practice in pharmaceutical merger cases*, the Commission attempts to blame private businesses for the anticompetitive conduct of government officials. In this case, Baxter and Wyeth are forced to divest a number of drugs to other competitors — in practice, a redistribution of wealth under government commands — because said drugs are nearly exclusive to Baxter and Wyeth. In the FTC's mind, this constitutes an illegal action.

But as the FTC well knows, the reason many drugs tend to remain concentrated in the hands of a few firms is the entry barriers posed by federal regulation, notably that of the Food and Drug Administration. It is the FDA that generally makes drug development too costly for manufacturers, not competing private firms. Now the FDA would claim that their regulation is essential to protect the "public interest" because they are promoting safety. This not only presupposes that drug companies have an incentive to produce faulty products — which they do not — but it also *directly conflicts* with the FTC's mission of preserving lower consumer prices. After all, the FDA's actions tend to increase the price of drugs. If the FTC were genuinely interested in protecting the interests of consumers (and producers), they would attack the FDA's monopolistic entry barriers, not private mergers. But neither the FTC nor the FDA care about anything beside increasing their own bureaucratic power. Hence this conspiracy against reputable, law-abiding pharmaceutical companies like Baxter and Wyeth.

You cannot have it both ways. The government cannot assert itself as the sole arbiter of drug safety, then blame the resulting cost increases on the private producers. The philosophy here is one of consumerism rather than capitalism; in other words, the government sees its role here as giving the consumers whatever they (presumably) want without liability. If consumers want arbitrary safety standards, they shall have it. If they want lower costs, they shall have that

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as well. The private companies will grant these contradictory requests, because they are viewed as little more than serfs of consumers and *their* government.

As always, it's individual rights that suffer the fatal blow in this scheme. Under the FTC-FDA viewpoint, companies like Baxter and Wyeth have *no rights* under the law, only obligations to other people, obligations that only a staff attorney at the FTC can determine and impose at-will. In an effort to obtain meritless achievement, the staff of this Commission goes on crusade after crusade against businesses and industries they know nothing about. CVT is willing to bet that there is not a single staff lawyer within the FTC's walls that knows a damn thing about the drug markets they are regulating through this case. Of course, in the FTC's insular world, lack of knowledge is never a barrier to the initiation of brute force against innocent businessmen.

Perhaps the single most appalling aspect of this consent agreement is the requirement that Baxter "provide incentives" to force their employees to quit and join other firms that benefit from the drug-line divestitures. Such a wanton interference in the contractual relationship between employees and businesses is an affront to every fundamental tenet of capitalism and free trade. The FTC has *absolutely no legal authority* to impose such a term in this settlement.

Little more can be said about this consent agreement without resorting to expletives. No rational or decent human being can condone what has happened here. Baxter and Wyeth *earned* every element of their success through fair competition, including having to jump through the FDA's arbitrary and capricious regulatory hoops. For the FTC to take away that achievement and give it to other companies that did *absolutely nothing to earn it* sends a clear message—the FTC values political egalitarianism far more than achievement. Perhaps the FTC should consider applying this philosophy to other institutions. After all, it's unfair that some students get A's and others get D's; the FTC should take away A's from the overly-successful students and give them to the failing kids to ensure greater "competition" within America's public schools. After all, too much achievement is the sign of a deviant, anticompetitive mind.

Until next time,



S.M. Oliva
President
Citizens for Voluntary Trade