ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

In the Matter of Watson Pharmaceuticals, Inc. and Robin Hood Holdings ("Arrow"), File No. 091-0116

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Watson Pharmaceuticals, Inc. ("Watson") and Robin Hood Holdings ("Arrow") that is designed to remedy the anticompetitive effects of Watson's acquisition of Arrow. The proposed Consent Agreement requires Watson to divest its rights and assets in generic cabergoline to Impax Laboratories, Inc. ("Impax"), and requires Arrow to spin-off its wholly owned subsidiary, Resolution Chemicals Ltd. ("Resolution"), which is currently developing generic dronabinol capsules, to a new entity to be owned in part by Resolution's current management. The Consent Agreement also requires Arrow to sell the U.S. generic dronabinol marketing rights to Impax.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order ("Order").

Pursuant to a Share Purchase Agreement dated June 16, 2009, Watson proposes to acquire all of the outstanding shares of Arrow in a cash and stock transaction valued at approximately $1.75 billion. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate 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, by lessening competition in the U.S. markets for the manufacture and sale of generic cabergoline tablets and generic dronabinol capsules. The proposed Consent Agreement will remedy the alleged violations by replacing the lost competition that would result from the acquisition in both of these markets.

I. The Products and Structure of the Markets

The proposed acquisition would eliminate significant future competition by reducing the number of potential generic suppliers in each of the relevant markets. The number of generic suppliers has a direct and substantial effect on generic pricing as each additional generic supplier can have a competitive impact on the market. Because there are already generic equivalents for each of the products at issue here, the branded versions no longer constrain the pricing of the generics.

Cabergoline, the generic name of Pfizer's Dostinex®, is a dopamine receptor agonist used to treat Parkinson's disease and multiple medical problems resulting from excessive production of the hormone prolactin. In the past year, sales of generic cabergoline tablets were in excess of $44.8 million. The market for generic cabergoline is highly concentrated. Arrow is

one of only three companies currently marketing generic cabergoline, along with Par Pharmaceutical Companies Inc. and Teva Pharmaceutical Industries Ltd. Watson has Food and Drug Administration ("FDA") approval to sell cabergoline and is poised to enter the cabergoline market within the next two years. Thus, the proposed acquisition eliminates the likely entry of the fourth generic alternative.

Dronabinol, the generic of Solvay Pharmaceutical's Marinol®, is used to treat nausea and vomiting caused by cancer chemotherapy, as well as loss of appetite and weight loss in HIV patients. Last year sales of generic dronabinol capsules were in excess of $74.4 million. The market for generic dronabinol is highly concentrated. Watson and Par are the only two suppliers of generic dronabinol. Arrow's subsidiary, Resolution, is developing a generic dronabinol product. Arrow represents one of a limited number of firms capable of developing generic dronabinol and is likely to have a competitive impact in a timely manner.

II. Entry

Entry into the markets for the manufacture and sale of generic cabergoline and generic dronabinol would not be timely, likely or sufficient in its magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Entry would not take place in a timely manner because the combination of generic drug development times and regulatory requirements, including FDA drug approval, takes at least two years. In addition to the regulatory hurdles facing a potential entrant, unique conditions characterize each market at issue that make additional entry unlikely to occur or be successful.

III. Effects

The proposed acquisition would cause significant anticompetitive harm to consumers in the U.S. markets for the manufacture and sale of cabergoline tablets and dronabinol capsules. In generic pharmaceutical markets, pricing is heavily influenced by the number of competitors that participate in a given market. The price of a generic pharmaceutical generally decreases with the entry of the second, third and even fourth competitor. The proposed transaction would eliminate a likely future competitor in each relevant market and would cause anticompetitive harm to consumers in the U.S. markets by eliminating future competition between Watson and Arrow and by increasing the likelihood that customers will pay higher prices.

IV. The Consent Agreement

The proposed Consent Agreement effectively remedies the proposed acquisition's anticompetitive effects in the relevant product markets. The Consent Agreement requires Watson and Arrow to divest certain rights and assets related to generic cabergoline and generic dronabinol to a Commission-approved acquirer no later than ten days after the acquisition. The acquirer of divested assets must receive the prior approval of the Commission. The Commission's goal in evaluating a possible purchaser of divested assets is to maintain the competitive environment that existed prior to the acquisition.

The Consent Agreement remedies the competitive concerns the acquisition raises in the generic cabergoline market by requiring Watson to divest its generic cabergoline product to Impax Laboratories Inc. Impax is a California-based generic pharmaceutical company with nearly seventy generic pharmaceutical products currently on the market. Impax has a successful track record developing and launching generic pharmaceuticals in the United States. With their resources, capabilities, strong reputation, and experience marketing generic products, Impax is expected to replicate the competition that would be lost with the proposed acquisition.

In order to remedy the competitive concern the acquisition raises in the generic dronabinol market, the proposed Consent Agreement requires Arrow to divest its Resolution subsidiary to a new entity named Reso Holdings, which will be owned in part by Resolution's current management. Resolution's management are the original developers of Arrow's generic dronabinol product and have conducted all of the research and development for Arrow's dronabinol product. The Consent Agreement thereby ensures that development of Arrow's generic dronabinol product will continue without disruption post-divestiture.

The proposed Consent Agreement also requires Arrow to sell the U.S. marketing rights for generic dronabinol to Impax Laboratories, Inc. Impax will replicate Arrow's role as the U.S. marketer for generic dronabinol once Resolution obtains all necessary regulatory approvals.

If the Commission determines that either Impax or Reso Holdings is not an acceptable acquirer of the assets to be divested, or that the manner of the divestitures is not acceptable, the parties must unwind the sale(s) and divest the assets within six months of the date the Order becomes final to another Commission-approved acquirer. If the parties fail to divest within six months, the Commission may appoint a trustee to divest the products.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.