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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of	)	
	)	**Docket No. C-4296**
NOVARTIS AG,	)	
	)	
a corporation.	)	
	)	

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 the Respondent Novartis AG ("Novartis") has entered into an agreement to acquire 52 percent of the issued and outstanding shares of Alcon, Inc. ("Alcon") from Nestle, S.A. ("Nestle"), all subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45, that such acquisition, if consummated, would violate Section 7 of the 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, 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 AG is a corporation organized, existing, and doing business under and by the virtue of the Swiss Confederation, with its principal executive offices located at Lichtstrasse 35, CH 4056 Basel, Switzerland, and the address of its United States subsidiary, Novartis Pharmaceuticals Company (a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware), located at 59 Route 10, East Hanover, New Jersey 07936. Novartis is engaged in the research, development, manufacture, and sale of human pharmaceutical products.

2. Respondent 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 company 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. Nestle, S.A. is a corporation organized, existing, and doing business under and by the virtue of the Swiss Confederation, with its headquarters address at Avenue Nestle, 55, 1800 Vevey, Switzerland.

4. Nestle holds a controlling interest in Alcon. Alcon is a corporation organized, existing, and doing business under and by virtue of the laws of the Swiss Confederation, with its principal executive offices at Bösch 69, P.O. Box 62 Hünenberg, Switzerland. Nestle, among other things, is engaged in the research, development, manufacture, and sale of human pharmaceutical products in the United States through Alcon.

III. THE PROPOSED ACQUISITION

5. On January 4, 2010, Novartis exercised a call option under the April 6, 2008 Purchase and Option Agreement (the "Acquisition Agreement") between Novartis and Nestle whereby Novartis proposes to acquire shares that represent approximately 52 percent of the outstanding stock of Alcon for approximately $28.1 billion (the "Acquisition"). When combined with the approximately 25 percent of Alcon that Novartis already owns, the Acquisition will provide Novartis with control of Alcon and 77 percent of the issued and outstanding shares of Alcon.

IV. THE RELEVANT MARKET

6. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the research, development, manufacture and sale of injectable miotics.

7. 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 MARKET

8. Injectable miotics are a class of prescription pharmaceutical products that are used to constrict the pupil during cataract surgery. The market for the research, development, manufacture and sale of injectable miotics is highly concentrated. Novartis and Alcon are the only companies that sell injectable miotics products in the United States. The Acquisition would create a monopoly in this market.

VI. ENTRY CONDITIONS

9. Entry into the relevant markets described in Paragraphs 6 and 7 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 drug development times and U.S. Food and Drug Administration approval requirements take at least two years. In addition, entry is not likely because the relevant markets are relatively small, limiting sales opportunities for any potential new entrant.

VII. EFFECTS OF THE ACQUISITION

10. The effect of the Acquisition, if consummated, may be to substantially lessen competition and 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, by eliminating actual, direct, and substantial competition between Novartis and Alcon in the market for injectable miotics products, thereby: (1) increasing the likelihood that Novartis will be able to unilaterally exercise market power in this market, and (2) increasing the likelihood that customers would be forced to pay higher prices.

VIII. VIOLATIONS CHARGED

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

12. The Acquisition described in Paragraph 5, 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 sixteenth day of August, 2010, issues its Complaint against said Respondent.

By the Commission, Commissioner Kovacic recused.

Donald S. Clark
Secretary

SEAL: