

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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

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<b>In the Matter of</b>		)
		)
<b>KING PHARMACEUTICALS, INC.,</b>		)
<b>a corporation.</b>	<b>Docket No. C -</b>	)
		)
<b>and</b>		)
		)
<b>ALPHARMA INC.,</b>		)
<b>a corporation</b>		)
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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 King Pharmaceuticals, Inc. (“King”), a corporation subject to the jurisdiction of the Commission, has offered to acquire the common shares of Alpharma Inc. (“Alpharma”), 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 (“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. DEFINITIONS**

1. “Oral long-acting opioids” or “oral LAOs” mean orally-administered extended-release formulations of potent pure opioid agonists, including, but not limited to, oxycodone, morphine sulfate and oxymorphone.
2. “Kadian” means any oral extended-release morphine sulfate product in any dose form, presentation or line extension thereof marketed or sold by Alpharma under the trademark Kadian.

3. “Avinza” means any oral extended-release morphine sulfate product in any dose form, presentation or line extension thereof marketed or sold by King under the trademark Avinza.
4. “Commission” means the Federal Trade Commission.
5. “FDA” means the United States Food and Drug Administration.
6. “Respondents” means King and Alpharma, individually and collectively.

## **II. RESPONDENTS**

7. Respondent King Pharmaceuticals, Inc. (“King”) is a corporation organized, existing and doing business under and by virtue of the laws of Tennessee, with its office and principal place of business located at 501 Fifth Street, Bristol, Tennessee 37620. King is engaged in the research, development, manufacture and sale of human pharmaceutical products.
8. Respondent Alpharma Inc. (“Alpharma”) is a corporation organized, existing and doing business under and by virtue of the laws Delaware, with its office and principal place of business located at 440 Route 22 East, Bridgewater, New Jersey 08807. Alpharma, is engaged in the research, development, manufacture and sale of human pharmaceutical products and animal health products.
9. Respondents are, and at all times relevant herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations 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.

## **III. THE PROPOSED ACQUISITION**

10. On September 11, 2008, King announced its intention to acquire up to 100 percent of the outstanding share of Alpharma through a cash tender offer. On November 23, 2008, King, Albert Acquisitions Corp., a wholly-owned subsidiary of King, and Alpharma executed an Agreement and Plan of Merger (“Acquisition Agreement”) pursuant to which King will acquire all of the outstanding shares of Alpharma. The acquisition is valued at approximately \$1.6 billion.

#### **IV. THE RELEVANT MARKET**

11. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is no broader than the manufacture and sale of oral LAOs, and includes the narrower market for oral long-acting morphine sulfate in which Kadian and Avinza compete directly with each other.
12. 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**

13. The United States market for oral LAOs is highly concentrated. Purdue Pharma L.P.'s OxyContin is the dominant product in the market. King's Avinza and Alpharma's Kadian are the only two significant branded morphine sulfate products in the market.

#### **VI. ENTRY CONDITIONS**

14. Entry into the relevant line of commerce described in Paragraph 11 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 FDA approval for a new oral LAO takes more than two years due to significant regulatory and intellectual property barriers.

#### **VII. EFFECTS OF THE ACQUISITION**

15. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend 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 King and Alpharma in the relevant market, thereby (1) increasing the likelihood that King will be able to exercise unilaterally market power in this market, and (2) increasing the likelihood that customers would be forced to pay higher prices.

**VIII. VIOLATIONS CHARGED**

16. The tender offer and the Acquisition Agreement described in Paragraph 10 constitute violations of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.
17. The Acquisition described in Paragraph 10, 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 \_\_\_\_\_, \_\_\_\_\_, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark  
Secretary

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