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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
Schering-Plough Corporation, a corporation,	)	**Docket No. C-4268**
and	)	
Merck & Co., Inc., 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 Respondent Schering-Plough Corporation ("Schering-Plough"), a corporation subject to the jurisdiction of the Commission, and Respondent Merck & Co., Inc. ("Merck"), a corporation subject to the jurisdiction of the Commission, have agreed to merge 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. RESPONDENTS

1. Respondent Merck is a corporation, organized, existing, and doing business under and by virtue of the laws of New Jersey, with its global headquarters located at One Merck Drive, Whitehouse Station, New Jersey 08889-0100.

2. Respondent Merck is engaged in, among other things, the research, development, manufacture, distribution and sale of human pharmaceutical products, as well as animal health products through Merial Limited ("Merial"). Merial is an equally-owned joint venture between Merck and Sanofi-Aventis S.A. that researches, develops manufactures, distributes and sells animal health products.

3. 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.

4. Respondent Schering-Plough is engaged in, among other things, the research, development, manufacture, distribution and sale of human pharmaceutical and animal health products.

5. Respondents are, and at all times 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 businesses are in or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

6. Pursuant to an Agreement and Plan of Merger dated March 8, 2009 (the "Agreement"), Schering-Plough proposes to acquire Merck and rename the surviving entity Merck, in a transaction valued at approximately $41.1 billion (the "Acquisition"). Merck and Schering-Plough are global suppliers of human pharmaceutical and biological products, and the Acquisition would combine two of the top four animal health suppliers in the United States. Through its joint venture with Sanofi-Aventis S.A., Merial Limited, Merck competes with Schering-Plough in a number of U.S. animal health pharmaceutical and biological markets that raise competitive concerns, including the specific animal health markets identified in Paragraph 7.

III. THE RELEVANT MARKETS

7. For the purposes of this Complaint, the relevant markets in which to analyze the effects of the Acquisition include the manufacture and sale of:

   a. neurokinin 1 receptor antagonists ("NK1 receptor antagonists") for chemotherapy-induced nausea and vomiting ("CINV") and post-operative nausea and vomiting ("PONV") in humans;

   b. live poultry vaccines for the prevention or treatment of: (1) each strain of Marek's disease; (2) each strain of infectious bronchitis; (3) Newcastle disease; (4) each strain of infectious bursal disease; (5) reovirus; (6) fowl pox; (7) coccidiosis; (8) laryngotracheitis; (9) avian encephalomyelitis; and (10) tenosynovitis;

   c. killed poultry vaccines for the prevention or treatment of: (1) each strain of infectious bronchitis; (2) Newcastle disease; (3) each strain of infectious bursal disease; and (4) reovirus; and

d. cattle gonadotropins.

8. 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.

IV. THE STRUCTURE OF THE MARKETS

9. Merck's Emend® is the only NK1 receptor antagonist for CINV and PONV approved in the United States. At the time the Acquisition was announced, Schering-Plough was in the process of out-licensing rolapitant, an NK1 receptor antagonist for CINV and PONV that Schering-Plough had been developing. Rolapitant is one of a very limited number of NK1 receptor antagonists for CINV and PONV in development for the U.S. market.

10. Merck and Schering-Plough are two of the four leading producers of animal pharmaceuticals and vaccines in the United States, and the two largest producers of poultry vaccines in the country. Both companies have extensive poultry vaccine product lines incorporating a variety of antigens, and together, Merck (through its interest in Merial Limited) and Schering-Plough account for over 75 percent of all poultry vaccine sales in the United States. Three other poultry vaccine suppliers account for the balance of U.S. sales. Each of the relevant markets is highly concentrated, as measured by the Herfindahl-Hirschman Index.

11. Merck and Schering-Plough are two of only three suppliers of cattle gonadotropins in the United States.

12. Merck and Schering Plough are actual, substantial competitors in the relevant markets.

V. ENTRY CONDITIONS

13. New entry into the relevant markets would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition set forth in Paragraph 15 below. New entry into the relevant markets is a difficult process because of, among other things, the time and cost associated with researching and developing the products, obtaining United States Food and Drug Administration or United States Department of Agriculture approval to market the products, and, particularly in the case of animal health products, gaining customer acceptance. As a result, new entry into any of these markets sufficient to achieve a significant market impact within two years is unlikely.

14. Expansion by smaller competitors into the relevant markets would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition set forth in Paragraph 15 below.

VI. 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 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 future competition between Merck's Emend® and Schering's rolapitant in the U.S. market for NK1 receptor antagonists for CINV and PONV, thereby: (1) increasing the likelihood that the combined entity would forgo or delay the launch of rolapitant; and (2) increasing the likelihood that the combined entity would delay or eliminate the additional price competition that would have resulted from rolapitant's entry into the market;

b. by eliminating actual, direct, and substantial competition between Merck and Schering-Plough for the sale of each of the relevant products identified in Paragraph 7. b - d (collectively "animal health products") in the United States;

c. by increasing the likelihood that the merged entity will exercise market power unilaterally in the U.S. markets for each of the animal health products;

d. by increasing the likelihood and degree of coordinated interaction between or among suppliers in the U.S. markets for each of the animal health products;

e. by reducing the merged entity's incentives to pursue further innovation in the U.S. markets for each of the animal health products; and

f. by increasing the likelihood that U.S. customers would be forced to pay higher prices for each of the animal health products.

VII. VIOLATIONS CHARGED

16. The Acquisition described in Paragraph 6 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

17. The Acquisition described in Paragraph 6, 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-ninth day of October, 2009, issues its Complaint against said Respondents.

By the Commission, Commissioner Harbour and Commissioner Kovacic recused.

Donald S. Clark
Secretary

SEAL: