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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of	)	
TEVA PHARMACEUTICAL INDUSTRIES LTD., a corporation;	)	**Docket No. C-4335**
and	)	
CEPHALON, 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 Teva Pharmaceutical Industries Ltd. ("Teva"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Cephalon, Inc. ("Cephalon"), a corporation 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. RESPONDENTS

1. Respondent Teva is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Israel, with its corporate head office and principal place of business located at 5 Basel Street, P.O. Box 3190, Petach Tikva 49131, Israel and the address of its United States subsidiary, Teva Pharmaceuticals USA, located at 1090 Horsham Road, P.O. Box 1090, North Wales, Pennsylvania 19454.

2. Respondent Cephalon is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head office and principal place of business located at 145 Brandywine Parkway, West Chester, Pennsylvania 19380.

3. 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 is a company whose business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

4. Pursuant to an Agreement and Plan of Merger ("Acquisition Agreement") dated May 1, 2011, Teva proposes to acquire Cephalon for approximately $6.2 billion (the "Acquisition").

III. THE RELEVANT MARKETS

5. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the manufacture and sale of:

a. human pharmaceutical products containing fentanyl citrate delivered transmucosally in a lozenge;

b. human pharmaceutical products containing extended release cyclobenzaprine hydrochloride; and

c. human pharmaceutical products containing modafinil.

6. 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 lines of commerce.

IV. THE STRUCTURE OF THE MARKETS

7. Transmucosal fentanyl citrate lozenges are a treatment for breakthrough cancer pain originally developed by Cephalon and marketed under the brand name Actiq. Only Teva, Cephalon/Watson Pharmaceuticals, Inc., and Covidien sell a generic version of the drug in the United States. Teva and Covidien both manufacture their own product while Watson's product is manufactured and supplied by Cephalon. Among the generic competitors, Teva is the leader with 43 percent share, Cephalon/Watson and Covidien have 40 percent and 17 percent, respectively. In that group, the Acquisition would increase the combined share of Teva/Cephalon/Watson to 83 percent and increase the Herfindahl-Hirschman Index concentration by 3,400 points to 7,178 points.

8. Cephalon developed and markets the branded formulation of extended release cyclobenzaprine hydrochloride, called Amrix, an extended release muscle relaxant. No companies currently market a generic version in the United States. Teva and Cephalon are two of a limited number of suppliers capable of entering with a generic version of the product in a timely manner.

9. Cephalon's branded modafinil product, Provigil, is used to treat excessive sleepiness caused by narcolepsy or shift work sleep disorder. No companies currently market a generic version in the United States. Teva and Cephalon are two of a limited number of suppliers capable of entering with a generic version of the product in a timely manner.

V. ENTRY CONDITIONS

10. Entry into the relevant markets described in Paragraphs 5 and 6 would not be timely, likely, or sufficient in 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.

VI. EFFECTS OF THE ACQUISITION

11. 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 actual, direct, and substantial competition between Teva and Cephalon, and reducing the number of competitors, in the market for transmucosal fentanyl citrate lozenges thereby: (1) increasing the likelihood that Teva will be able to unilaterally exercise market power in these markets; (2) increasing the likelihood and degree of coordinated interaction between or among the remaining competitors; and (3) increasing the likelihood that customers would be forced to pay higher prices;

b. by eliminating potential competition between Teva and Cephalon and reducing the number of generic competitors in the future thereby: (1) increasing the likelihood that the combined entity would forego or delay the launch of one of the extended release cyclobenzaprine hydrochloride products, and (2) increasing the likelihood that the combined entity would delay or eliminate the substantial additional price competition that would have resulted from an additional supplier of extended release cyclobenzaprine hydrochloride products; and

c. by eliminating potential competition between Teva and Cephalon and reducing the number of generic competitors in the future thereby: (1) increasing the likelihood that the combined entity would forego or delay the launch of one of the modafinil products, and (2) increasing the likelihood that the combined entity would delay or eliminate the substantial additional price competition that would have resulted from an additional supplier of modafinil products.

VII. VIOLATIONS CHARGED

12. The Acquisition Agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

13. The Acquisition described in Paragraph 4, 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 seventh day of October, 2011 issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: