ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT
In the Matter of Prestige Brands Holdings, Inc. and Insight Pharmaceuticals Corporation
File No. 141 0159

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Prestige Brands Holdings, Inc. ("Prestige") and Insight Pharmaceuticals Corporation ("Insight"), which is designed to remedy the anticompetitive effects of Prestige's acquisition of Insight.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again evaluate the proposed Consent Agreement, along with the comments received, in order to make a final decision as to whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order ("Order").

Pursuant to a Stock Purchase Agreement dated April 25, 2014, Medtech Products Inc. ("Medtech"), a subsidiary of Prestige, intends to purchase all of the outstanding shares of Insight for approximately $750 million (the "Proposed Acquisition"). Both parties sell over-the-counter ("OTC") motion sickness medications in the United States. The Commission alleges in its Complaint 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 U.S. markets for the manufacture, marketing, distribution, and sale of OTC motion sickness medications. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that would otherwise be eliminated by the Proposed Acquisition. Specifically, under the terms of the Consent Agreement, Prestige would be required to divest all of Insight's rights and assets related to its OTC motion sickness product, Bonine. Prestige has proposed Wellspring Pharmaceutical Corporation ("Wellspring") as the buyer of the assets.

II. The Product and Structure of the Market

Prestige's proposed acquisition of Insight would significantly increase concentration in the OTC motion sickness medications market. Motion sickness is a condition in which a disagreement exists between visually perceived movement and the balance center of the inner ear's sense of movement. For example, a passenger on a ship might experience motion sickness if the inner ear senses the motion of waves, but the passenger's eyes do not see any movement. The most common symptoms of motion sickness are dizziness, fatigue, and nausea.

Prestige markets and sells the bestselling brand of OTC motion sickness medication, Dramamine. The only other branded OTC motion sickness medication with significant sales is Bonine, which is sold and marketed by Insight. Alva-Amco sells the only other branded OTC motion sickness medication, but its sales are minimal. Private label OTC motion sickness products have significant sales, but private label OTC products have only a limited competitive impact in the market because they are usually priced at a fixed discount to branded OTC motion sickness medication products. Plus, private label products are not typically promoted or marketed. Unremedied, the Proposed Acquisition will consolidate the two most significant suppliers of OTC motion sickness medications and would substantially increase the Herfindahl-Hirschman Index.

III. Entry

Entry into the manufacture and sale of OTC motion sickness medications would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. The high up-front costs associated with establishing a reputable and competitive brand are significant when compared to the limited sales available in the United States. This high cost of entry relative to sales opportunities is exacerbated by the difficulty a new entrant would have in convincing retailers to either add a new untested brand to shelves or supplant an existing brand with its new brand.

IV. Effects

The Proposed Acquisition would likely cause significant anticompetitive harm to consumers in the market for the manufacture and sale of OTC motion sickness medications by eliminating actual, direct, and substantial competition between Prestige and Insight in this market. The Proposed Acquisition would likely result in higher prices for consumers because it would remove the close competition between Prestige's Dramamine and Insight's Bonine in terms of pricing and promotional activities.

V. The Consent Agreement

The proposed Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in the relevant market. Pursuant to the Consent Agreement, the parties are required to divest Insight's rights and assets related to Bonine to Wellspring. Further, the proposed Consent Agreement requires Insight to assign to Wellspring its contract manufacturing and contract packaging agreements for the divested assets. The parties must accomplish these divestitures and relinquish their rights no later than ten days after the Proposed Acquisition is consummated.

Wellspring is well-suited to acquire the Bonine assets because of its current presence in other OTC retail markets. Wellspring produces and markets a portfolio of OTC brands, including anti-nausea products, skin creams, hygiene products, and potassium supplements, which are widely distributed throughout the United States and Canada. In addition, WellSpring is a contract manufacturing organization serving well-known U.S. pharmaceutical companies while also manufacturing many of its own products at its plant in Oakville, Ontario, Canada. Since Wellspring will step into Insight's existing contract manufacturing relationship for the production of Bonine, no transfer of manufacturing will be necessary for the proposed divestiture and Wellspring will be able to compete immediately in the OTC motion sickness medications market.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the Proposed Acquisition. If the Commission determines that Wellspring is not an acceptable acquirer of the divested assets, or that the manner of the divestiture is not acceptable, the parties must unwind the sale of rights to Wellspring, and divest the Bonine assets to a Commission-approved acquirer within six months of the date the Order becomes final. In that circumstance, the Commission may appoint a trustee to divest the product if the parties fail to divest it as required.

The proposed Consent Agreement contains several provisions to help ensure that the divestiture is successful. The Order requires Prestige and Insight to take all action necessary to maintain the economic viability, marketability, and competitiveness of the product to be divested until such time that they are transferred to a Commission-approved acquirer. The Order also requires that Prestige and Insight transfer all confidential business information, including customer information related to the divestiture product, to Wellspring.

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 Order or to modify its terms in any way.