ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

In the Matter of Eli Lilly and Company and Novartis AG

File No. 141-0142

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Eli Lilly and Company ("Eli Lilly"), which is designed to remedy the anticompetitive effects of Eli Lilly's acquisition of the Novartis Animal Health business ("Novartis Animal Health") from Novartis AG ("Novartis").

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 and Asset Purchase Agreement dated April 22, 2014, Eli Lilly proposes to acquire Novartis Animal Health for approximately $5.4 billion (the "Proposed Acquisition"). Both parties sell canine heartworm parasiticide products 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 the U.S. market for canine heartworm parasiticides. 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, Eli Lilly is required to divest all of the rights and assets related to Sentinel Spectrum and Sentinel Flavor Tabs ("the Sentinel products"). Eli Lilly has proposed Virbac S.A. ("Virbac") as the buyer of the rights and assets related to the Sentinel products.

II. The Relevant Product and Structure of the Market

The relevant product market in which to analyze the Proposed Acquisition is no broader than all canine heartworm parasiticides. Canine heartworm parasiticides are medications used to treat heartworm disease in dogs. Heartworm disease is a potentially fatal condition caused by parasitic worms living in the arteries of a dog's heart and lungs. Canine heartworm parasiticides primarily target heartworm, but the various products in the category have different attributes. For example, some canine heartworm parasiticides also treat other internal parasites, such as hookworm, roundworm, whipworm and tapeworm, and/or external parasites, like fleas. Canine parasiticides are offered in oral, topical, and injectable formulations, with most customers preferring the oral ones.

The United States is the relevant geographic market in which to assess the competitive effects of the Proposed Acquisition. Canine heartworm parasiticides must be approved by the FDA or EPA before being sold in the United States. Thus, canine heartworm parasiticides sold outside the United States, but not approved for sale in the United States, are not alternatives for U.S. consumers.

The market for canine heartworm parasiticides in the United States is highly concentrated. Eli Lilly, which markets Trifexis, is the market leader with a share in excess of 35%. Merial Limited, which sells Heartgard and Heartgard Plus, is the second-leading supplier, with a share of 30%. Heartgard and Heartgard Plus are oral products but do not treat fleas. Novartis's Sentinel product line has an 8% market share. The only other significant supplier is Zoetis Inc., which supplies Revolution and ProHeart 6. Revolution is a combination product that requires topical application. ProHeart 6 is an injectable product that does not impact fleas. Thus, the Acquisition would consolidate the two closest competitors, would substantially increase concentration, and would produce a single firm controlling more than 43% of the relevant market.

III. Entry

Entry into the U.S. market for canine heartworm parasiticides would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Proposed Acquisition. Three major obstacles stand in the way of a prospective canine heartworm parasiticide entrant: lengthy development timeframes, FDA and other agency approval requirements, and difficulty of establishing a brand name and convincing veterinarians to prescribe new products.

IV. Effects of the Acquisition

Eli Lilly's acquisition of Novartis Animal Health will adversely affect competition in the market for canine heartworm parasiticides by eliminating close head-to-head competition between Trifexis and the Sentinel products. Trifexis and the Sentinel products are each other's closest competitors because, among other reasons, they are the only oral heartworm products that impact fleas. Flea prevention combined with heartworm prevention in one oral treatment is particularly important as it combines the convenience of a single oral treatment while avoiding the mess and smell of topical products. In addition, Trifexis and the Sentinel products are the only oral combination products that treat whipworm. These attributes provide a scope of treatment and ease of use not available with other canine heartworm parasiticides. Absent a remedy, the Proposed Acquisition would likely result in higher prices for consumers due to the ability of Eli Lilly to effect a unilateral price increase.

V. The Consent Agreement

The proposed Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in the canine heartworm parasiticide market by requiring the parties to divest the rights and assets related to the Sentinel products to Virbac. This divestiture will

preserve the close competition between the only two oral products on the market indicated for the treatment of heartworm, other internal worms, and fleas in dogs.

Virbac is a multinational pharmaceutical company headquartered in Carros, France with approximately 4,350 employees. In 2013, the company generated $934 million in global revenues. Companion animal products comprise 56% of Virbac sales, making it the sixth-largest veterinary product company in the companion animal products business. Virbac operates in the United States through its subsidiary, Virbac Corp., which focuses on canine, feline, and equine pharmaceutical and hygiene products. Virbac Corp. has 350 employees, and had $130 million in revenue in 2013. Virbac Corp. is well suited to acquire the Sentinel products because of its current presence in the companion animal health business, and because it already has experience with canine heartworm products. Although Virbac currently sells canine heartworm products, their sales are relatively small and, because they do not contain an active ingredient to treat fleas, their competitive interaction with the Sentinel products is limited.

The Order requires Eli Lilly to divest all of its respective rights and interests in the Sentinel products no later than ten days after the consummation of the Proposed Acquisition or on the date on which the Order becomes final, whichever is earlier. The divestiture includes all regulatory approvals, brand names, marketing materials, and confidential business information, including customer information, related to the Sentinel products, and other assets associated with producing, marketing and selling the Sentinel products. To ensure the divestiture is successful, the Order requires Eli Lilly and Novartis to secure all third-party consents and waivers required to permit Virbac to conduct business with the Sentinel products. The Order also requires Eli Lilly to divest supply chain assets related to the Sentinel products. These assets include certain rights and intellectual property for the active pharmaceutical ingredients in the Sentinel products. Additionally, Eli Lilly and Virbac must complete a technical transfer of manufacturing from Novartis to Virbac. The Order calls for an interim supply agreement of the Sentinel products for up to four years while Eli Lilly and Virbac complete the technical transfer.

The Commission has agreed to appoint an Interim Monitor to ensure that Eli Lilly and Novartis comply with all of their obligations pursuant to the Consent Agreement and to keep the Commission informed about the status of the transfer of the rights and assets to Virbac.

The Commission's goal in evaluating possible purchasers of divested rights and assets is to maintain the competitive environment that existed prior to the Proposed Acquisition. If the Commission determines that Virbac is not an acceptable acquirer of the divested rights and assets, or that the manner of the divestitures is not acceptable, the parties must unwind the sale of rights and assets to Virbac and divest them 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 rights and assets if the parties fail to divest them as required.

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.