

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS  
TO AID PUBLIC COMMENT**  
*In the Matter of Sun Pharmaceutical Industries Ltd., Ranbaxy Laboratories Ltd.,  
and Daiichi Sankyo Co., Ltd., File No. 141-0134*

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Sun Pharmaceutical Industries Ltd. (“Sun”) that is designed to remedy the anticompetitive effects resulting from Sun’s acquisition of Ranbaxy Laboratories Ltd. (“Ranbaxy”) from Daiichi Sankyo Co., Ltd. (“Daiichi Sankyo”). Under the terms of the proposed Consent Agreement, the parties are required to divest all of Ranbaxy’s rights and assets to generic minocycline hydrochloride 50 mg, 75 mg, and 100 mg tablets (“minocycline tablets”) to Torrent Pharmaceuticals Ltd. (“Torrent”).

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, to make a final decision as to whether it should withdraw from the proposed Consent Agreement or make final the Decision and Order (“Order”).

Pursuant to an agreement dated April 6, 2014, Sun plans to acquire Ranbaxy in an all-stock deal valued at approximately \$4 billion (the “Proposed Acquisition”). 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 future competition in the markets for each dosage strength of generic minocycline tablets in the United States. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that would otherwise be eliminated by the Proposed Acquisition.

**I. The Product and Structure of the Markets**

The Proposed Acquisition would reduce the number of future suppliers in the markets for generic minocycline tablets, which physicians prescribe to treat bacterial infections including pneumonia and other respiratory tract infections, acne, and other skin, genital, and urinary tract infections. Pharmaceutical companies usually launch generic versions of drugs after a branded product loses its patent protection. When only one generic product is available, the price for the branded product acts as a ceiling above which the generic manufacturer cannot price its product. During this period, the branded product competes directly with the generic. Once multiple generic suppliers enter a market, the branded drug manufacturer usually ceases to provide any competitive constraint on the prices for generic versions of the drug. Rather, generic suppliers compete only against each other. In generic pharmaceutical product markets, price generally decreases as the number of generic competitors increases. The United States is the relevant geographic market for generic drugs because the U.S. Food and Drug Administration (“FDA”) must approve them for sale within the United States.

There are currently only three suppliers of each dosage strength of generic minocycline tablets in the United States: Ranbaxy, Dr. Reddy's Laboratories Ltd., and Par Pharmaceutical Companies, Inc. Sun is one of only a limited number of firms likely to enter the generic minocycline tablets markets in the near future. Sun's acquisition of Ranbaxy would therefore deprive consumers of the increased competition and likely price reductions that would have occurred as a result of Sun's independent entry.

## **II. Entry**

Entry into the markets for generic minocycline tablets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Proposed Acquisition. The combination of drug development times and regulatory requirements, including approval by the FDA, is costly and lengthy.

## **III. Effects**

The Proposed Acquisition likely would cause significant anticompetitive harm to consumers by eliminating future competition that would otherwise have occurred when Sun's generic minocycline tablets entered the markets. Market participants characterize generic minocycline tablets as commodities, and each market as one in which the number of generic suppliers has a direct impact on pricing. Customers and competitors have confirmed that the price of generic pharmaceutical products decreases with new entry even after several other suppliers have entered the market. Further, customers generally believe that having at least four suppliers in each generic pharmaceutical market produces more competitive prices than if fewer suppliers are available to them.

The Proposed Acquisition would eliminate significant future competition between Sun and Ranbaxy. The evidence shows that anticompetitive effects are likely to result from the Proposed Acquisition due to the elimination of an additional independent competitor in the markets for generic minocycline tablets, which would have allowed customers to negotiate lower prices. Thus, absent a remedy, the Proposed Acquisition will likely cause U.S. consumers to pay significantly higher prices for generic minocycline tablets.

## **IV. The Consent Agreement**

The proposed Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in the relevant markets. Pursuant to the Consent Agreement and the Order, the parties are required to divest all of Ranbaxy's rights and assets to generic minocycline tablets to Torrent. The parties must accomplish these divestitures and relinquish their rights no later than ten days after the Proposed Acquisition is consummated.

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 Torrent is not an acceptable acquirer, or that the manner of the divestitures is not acceptable, the proposed Order requires the parties to unwind the sale of rights to Torrent and then divest the products to a Commission-approved acquirer within six months of the date the

Order becomes final. The proposed Order further allows the Commission to appoint a trustee in the event the parties fail to divest the products as required.

The proposed Consent Agreement and Order contain several provisions to help ensure that the divestitures are successful. The Order requires that Ranbaxy transfer to Torrent all confidential business information and requires that Sun and Ranbaxy take all actions that are necessary to maintain the full viability and marketing of the generic minocycline tablets until Torrent commences the distribution, marketing, and sale of the products.

The proposed Order also requires the parties to divest Ranbaxy's generic minocycline hydrochloride 50 mg, 75 mg, and 100 mg capsules ("minocycline capsules") to Torrent to ensure that Torrent achieves regulatory approval to qualify a new API supplier for its minocycline tablets as quickly as Ranbaxy would have. Torrent will be able to establish the current API supplier of the minocycline capsules as the API supplier for its minocycline tablets through a less time-intensive regulatory process if Torrent controls both products and uses the same API supplier for both. Moreover, the proposed Order requires Sun and Ranbaxy to manufacture and supply generic minocycline tablets and capsules to Torrent following the divestiture to allow Torrent to enter the markets while it validates its manufacturing process and seeks the necessary FDA approvals.

The Commission will appoint Frank Civile to act as an interim monitor to assure that Sun and Ranbaxy expeditiously comply with all of their obligations and perform all of their responsibilities pursuant to the Consent Agreement. In order to ensure that the Commission remains informed about the status of the transfer of rights and assets, the Consent Agreement requires Sun and Ranbaxy to file reports with the interim monitor who will report in writing to the Commission concerning performance by the parties of their obligations under the Consent Agreement.

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.