ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

In the Matter of Impax Laboratories, Inc., RoundTable Healthcare Partners II, L.P., and Tower Holdings, Inc.

File No. 151-0011

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Impax Laboratories, Inc. ("Impax") that is designed to remedy the anticompetitive effects resulting from Impax's acquisition of Tower Holdings, Inc. ("Tower") and Lineage Therapeutics, Inc. ("Lineage") from RoundTable Healthcare Partners II, L.P. ("RoundTable"). As part of that transaction, Impax will acquire CorePharma, L.L.C. ("CorePharma"), a Tower subsidiary that manufactures and sells generic pharmaceuticals. Under the terms of the proposed Consent Agreement, the parties are required to divest all of CorePharma's rights and assets to generic 5 mg pilocarpine hydrochloride tablets ("pilocarpine tablets") and generic ursodiol tablets ("ursodiol tablets") to Perrigo Company plc ("Perrigo").

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 a Stock Purchase Agreement executed on October 8, 2014, Impax will acquire 100% of the outstanding voting securities of Tower and Lineage from RoundTable in a transaction valued at approximately $700 million (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 generic pilocarpine and generic ursodiol tablets in the United States. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that otherwise would be eliminated by the Proposed Acquisition.

I. The Products and Structure of the Markets

The Proposed Acquisition would reduce the number of future suppliers in the markets for generic pilocarpine tablets, which physicians prescribe to treat dry mouth, and generic ursodiol tablets, which physicians prescribe to treat biliary cirrhosis. Currently, there are only two suppliers of generic pilocarpine tablets—Lannett Company, Inc. and Actavis plc. Impax and CorePharma are the only likely new entrants into this market in the near future. In the market for generic ursodiol tablets, there are four current competitors, including Impax. This market has recently experienced supply shortages. CorePharma is one of a limited number of firms likely to enter the ursodiol market in the near future. Without a remedy, the Proposed Acquisition would eliminate CorePharma as an independent entrant into the markets for generic pilocarpine and

generic ursodiol tablets, likely depriving customers of the significant cost savings that result when an additional generic supplier enters a concentrated market.

II. Entry

Entry into the markets for generic pilocarpine and generic ursodiol 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 if Impax and CorePharma remained independent. Market participants characterize generic pilocarpine and generic ursodiol 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 observed—and pricing data confirms—that the price of these 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 CorePharma and Impax. 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 pilocarpine and generic ursodiol tablets, which would have enabled customers to negotiate lower prices. Thus, absent a remedy, the Proposed Acquisition will likely cause U.S. consumers to pay significantly higher prices for pilocarpine and ursodiol 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 CorePharma's rights and assets related to pilocarpine and ursodiol tablets to Perrigo. Perrigo is a large and established generic pharmaceutical manufacturer with significant experience acquiring, integrating, manufacturing, and marketing generic products. 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 Perrigo 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 Perrigo 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 CorePharma transfer to Perrigo all confidential business information and requires that CorePharma and Impax take all actions that are necessary for Perrigo to obtain FDA approval to manufacture and market pilocarpine and ursodiol tablets.

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.