

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of)	
)	
BRISTOL-MYERS SQUIBB COMPANY,)	
a corporation;)	
)	
and)	Docket No. C-4690
)	
CELGENE CORPORATION,)	
a corporation.)	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Bristol-Myers Squibb Company (“BMS”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire the equity interests of Respondent Celgene Corporation (“Celgene”), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, that such acquisition, if consummated, would violate 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, 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 Bristol-Myers Squibb Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at 430 East 29th Street, 14th Floor, New York, New York 10016.

2. Respondent Celgene Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at 86 Morris Avenue, Summit, New Jersey 07901.
3. Each Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and engages in business that 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 dated January 2, 2019, Respondent BMS proposes to acquire the equity interests of Respondent Celgene in a series of transactions valued at approximately \$74 billion (the “Acquisition”). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKETS

5. The relevant line of commerce in which to analyze the effects of the Acquisition is the research, development, manufacture, and sale of oral products to treat moderate-to-severe psoriasis.
6. The United States is the relevant geographic area in which to assess the competitive effects of the Acquisition in the relevant line of commerce.

IV. THE STRUCTURE OF THE MARKET

7. Celgene’s Otezla is the most significant oral product to approved to treat moderate-to-severe psoriasis in the United States. Several older oral generic products, including methotrexate and acitretin, are approved by the U.S. Food and Drug Administration (“FDA”) to treat psoriasis that does not respond to topical medication and light therapy. While these drugs are still used occasionally to treat psoriasis, most doctors now prescribe agents that have better efficacy, better safety, or a more favorable side effect profile for patients with moderate-to-severe psoriasis who desire an oral treatment. BMS is developing BMS 986165, a selective tyrosine kinase 2 inhibitor, which is the most advanced oral treatment for moderate-to-severe psoriasis in development.

V. ENTRY CONDITIONS

8. 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. De novo entry would not be timely because the combination of drug development times and FDA approval requirements is lengthy. In addition, no other entry is likely to occur such that it would be timely and sufficient to deter or counteract the competitive harm likely to result from the Acquisition.

VI. EFFECTS OF THE ACQUISITION

9. The effects of the Acquisition, if consummated, may be to substantially lessen competition and tend to create a monopoly in the relevant lines of commerce, 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 by eliminating future competition between BMS and Celgene in the development and sale of oral products to treat moderate-to-severe psoriasis.

VII. VIOLATIONS CHARGED

10. The Acquisition described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.
11. 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 fifteenth day of November, 2019, issues its Complaint against said Respondents.

By the Commission, Commissioners Chopra and Slaughter dissenting.

April J. Tabor
Acting Secretary

SEAL: