

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
) Docket No.C-3726
BAXTER INTERNATIONAL INC. ,)
 a corporation.)
)
)

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Respondent, Baxter International Inc. ("Baxter"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire the majority of the outstanding voting stock of Immuno International AG ("Immuno"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45, and that such an 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. RESPONDENT

1. Respondent Baxter is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its principal place of business located at One Baxter Parkway, Deerfield, Illinois 60015.
2. 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 is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE ACQUIRED COMPANY

3. Immuno is a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland, with its principal place of business located at Zollikerstrasse 60, CH-8702, Zollikon, Switzerland.
4. Immuno 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 is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE ACQUISITION

5. On or about August 28, 1996, Baxter entered into a Stock Purchase Agreement with Pharminvest Ltd., Albenga Holding en Handelmaatschappij V.V. and Bio-Products and Bio-Engineering SA to purchase the majority of the voting stock of Immuno for approximately \$462.8 million ("Acquisition").

IV. THE RELEVANT MARKETS

6. For purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:
 - a. the research, development, manufacture and sale of Factor VIII Inhibitor Treatments approved by the United States Food and Drug Administration ("FDA") for sale in the United States; and
 - b. the research, development, manufacture and sale of Fibrin Sealant to be approved by the FDA for sale in the United States.
7. For purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce.

V. STRUCTURE OF THE MARKET

8. The market for the research, development, manufacture and sale of Factor VIII Inhibitor Treatments is highly concentrated as measured by the Herfindahl-Hirschman Index

("HHI"). Baxter and Immuno are the only two suppliers of Factor VIII Inhibitor Treatments in the United States.

9. Baxter and Immuno are actual competitors in the relevant market for the research, development, manufacture and sale of Factor VIII Inhibitor Treatments.
10. The market for the research, development, manufacture and sale of Fibrin Sealant is highly concentrated as measured by the HHI. Baxter and Immuno are two of only a small number of companies seeking FDA approval to market Fibrin Sealant in the United States.
11. Baxter and Immuno are actual competitors in the relevant market for the research, development, manufacture and sale of Fibrin Sealant in the United States.

VI. BARRIERS TO ENTRY

12. Entry into the research, development, manufacture and sale of Factor VIII Inhibitor Treatments is difficult and time consuming, requiring the expenditure of significant resources over a period of many years with no assurance that a viable commercial product will result. The existence of broad patents governing the formulations and the manufacture of such products make new entry both difficult and unlikely.
13. Entry into the research, development, manufacture and sale of Fibrin Sealant is difficult and time consuming, requiring the expenditure of significant resources over a period of many years with no assurance that a viable commercial Fibrin Sealant will result. The existence of broad patents governing the formulations and the manufacture of such products make new entry both difficult and unlikely.

VII. EFFECTS OF THE ACQUISITION

14. The effects of the Acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant markets 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:
 - a. by eliminating direct actual competition between Baxter and Immuno in the relevant markets;

- b. by increasing the likelihood that Baxter will unilaterally exercise market power in the relevant markets; and
- c. by creating a dominant firm in the relevant markets.

VIII. VIOLATIONS CHARGED

- 15. The Acquisition described in Paragraph 5 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.
- 16. The Acquisition described in Paragraph 5, 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 twenty-fourth day of March, 1997, issues its Complaint against said respondent.

By the Commission, Commissioner Starek recused.

Donald S. Clark
Secretary

SEAL: