ANALYSIS OF PROPOSED CONSENT ORDER
TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Cephalon, Inc. and Cima Labs, Inc., which is designed to remedy the anticompetitive effects of the acquisition of Cima by Cephalon. Under the terms of the proposed Consent Agreement, Cephalon would be required to grant to a third party company, a fully paid-up, irrevocable license to make and sell a generic equivalent of its breakthrough cancer pain ("BTCP") drug Actiq in the United States.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the Decision and Order ("Order").

Pursuant to an Agreement and Plan of Merger dated November 3, 2003, between Cephalon and Cima, Cephalon proposes to acquire 100 percent of the issued and outstanding shares of Cima in a stock-for-stock transaction valued at approximately $515 million. Cephalon also intends to pay consideration such that each issued and outstanding share of Cima common stock will be converted into the right to receive $34.00 in cash. The Commission's Complaint alleges that the proposed acquisition, 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 Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the market for prescription drug products indicated for the treatment of BTCP. The proposed Consent Agreement will remedy the alleged violations by replacing the lost potential competition that . pla15 uionsor

Both branded and generic entry into the market for BTCP products is difficult, time consuming, and costly. Cima is the firm best positioned to enter the market. Other firms that

months earlier. With the licenses and technology transfer provided by Cephalon, Barr will be able to compete aggressively in the BTCP market against Actiq. The proposed remedy also prohibits Cephalon from making certain regulatory filings that would delay FDA approval of Barr's generic Actiq. These provisions ensure that Barr will be in a position to launch a generic version of Actiq no later than OVF launch, eliminating the anticompetitive effects of the proposed acquisition and providing patients with earlier access to a lower priced generic product.

Normally a generic remedy would not be sufficient to solve the anticompetitive problems raised by a merger of two branded pharmaceutical competitors because it does not replace the lost promotion and innovation competition between branded companies. In this case, the evidence showed that there is not likely to be any further innovation competition between Cephalon and Cima because, among other things, Actiq is near the end of its patent life. Moreover, Actiq and OVF are both formulations of fentanyl, a readily-available, non-patented active ingredient. The facts showed that an important anticompetitive effect of the merger was to defeat generic competition. The evidence in this case also suggests that, regardless of the merger, Cephalon will no longer promote the sugar-based Actiq formulation after OVF's launch. Finally, any lost brand-to-brand price competition which would have occurred between Cephalon and Cima is more thalpuen