ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

In the Matter of Mylan Laboratories Inc. and E. Merck oHG, File No. 071-0164

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Mylan Laboratories ("Mylan") and E. Merck oHG ("Merck") which is designed to remedy the anticompetitive effects of the acquisition of certain assets of Merck by Mylan. Under the terms of the proposed Consent Agreement, the companies would be required to assign and divest the Merck rights and assets necessary to manufacture and market generic: (1) acebutolol hydrochloride capsules; (2) flecainide acetate tablets; (3) guanfacine hydrochloride tablets; (4) nicardipine hydrochloride capsules; and (5) sotalol hydrochloride AF tablets to Amneal Pharmaceuticals LLC ("Amneal").

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) 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, modify it, or make final the Decision and Order ("Order").

Pursuant to an Agreement and Plan of Merger executed on May 12 and 13, 2007, Mylan proposes to acquire Merck's generic subsidiary ("Merck Generics") and all subsidiaries held directly or indirectly by Merck Generics, by acquiring 100 percent of the issued shares of those subsidies for approximately $6.6 billion. The Commission's Complaint alleges 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 competition in the U.S. markets for the manufacture and sale of the following generic pharmaceutical products: (1) acebutolol hydrochloride capsules; (2) flecainide acetate tablets; (3) guanfacine hydrochloride tablets; (4) nicardipine hydrochloride capsules; and (5) sotalol hydrochloride AF tablets (the "Products"). The proposed Consent Agreement will remedy the alleged violations by replacing the lost competition that would result from the acquisition in each of these markets.

The Products and Structure of the Markets

The proposed acquisition of certain assets of Merck by Mylan would strengthen Mylan's worldwide position in generic pharmaceuticals and provide Mylan with a stronger pipeline of generic products. The companies overlap in a number of generic pharmaceutical markets, and if consummated, the transaction likely would lead to anticompetitive effects in five of these markets.

The transaction would reduce the number of competing generic suppliers in the overlap markets. The number of generic suppliers has a direct and substantial effect on generic pricing as each additional generic supplier can have a competitive impact on the market. Because there are multiple generic equivalents for each of the products at issue here, the branded versions no longer significantly constrain the generics' pricing.

In the market for generic acebutolol capsules, Mylan and Merck are the only companies manufacturing and selling products in the United States. For the four other generic products, Mylan and Merck currently are two of a small number of suppliers offering the product. In each of these markets, there are a limited number of competitors.

Generic acebutolol hydrochloride is a beta blocker used to treat hypertension. Mylan and Merck/Par are the only suppliers of generic acebutolol capsules in the United States, with respective market shares of approximately 59 and 41 percent. Therefore, the proposed transaction would give Mylan a monopoly in this market.

Generic flecainide acetate is an anti-arrhythmia drug used to treat heart problems. Flecainide is produced and sold by five companies in the United States: Mylan, Merck/Par, Roxane Laboratories Inc. ("Roxane"), Barr Pharmaceuticals Inc., and Ranbaxy Pharmaceuticals Inc. Mylan is the market leader with nearly 57 percent share, followed by Merck/Par with 21 percent, and Roxane with 19 percent. After Mylan's acquisition of Merck Generics, Mylan's market share would increase to approximately 78 percent and the number of suppliers of generic flecainide would decrease from five to four.

Guanfacine hydrochloride, the generic version of the branded drug Tenex, is an alpha blocker used to treat hypertension that comes in both 1 mg and 2 mg strengths. Mylan is the market leader with nearly 53 percent share. Watson Pharmaceuticals Inc. ("Watson"), Merck/Par, Actavis Group hf. ("Actavis"), Major Pharmaceuticals Inc. and Qualitest Pharmaceuticals Inc. also manufacture and sell generic guanfacine tablets in the United States, although not all six suppliers are capable of supplying all formulations. For instance, Mylan, Merck/Par, Watson and Actavis, are the only suppliers of the 2 mg formulation of guanfacine. Because many customers prefer to purchase the 1 mg and 2 mg formulations of the product from one supplier, the competitive significance of the other four suppliers who do not sell these formulations is limited.

Nicardipine hydrochloride is a calcium channel blocker used to treat hypertension. Mylan, Merck, and Teva Pharmaceutical Industries Ltd. ("Teva") are the only manufacturers of generic nicardipine capsules in the United States, with respective market shares of 54 percent, 32 percent and 14 percent. The proposed transaction would thus result in an increase in Mylan's

these markets allows customers to negotiate lower prices, and that a reduction in the number of competitors in these markets would allow the merged entity and other market participants to raise prices. Likewise, in the generic guanfacine hydrochloride tablet market, the reduction in the number of competitors also would likely lead to higher prices.

The competitive concerns can be characterized as both unilateral and coordinated in nature. The homogenous nature of the products involved, the minimal incentives to deviate, and the relatively predictable prospects of gaining new business all indicate that the firms in the market will find it profitable to coordinate their pricing. The impact that a reduction in the number of firms would have on pricing can also be explained in terms of unilateral effects, as the likelihood that the merging parties would be the first and second choices in a significant number of bidding situations is enhanced where the number of firms participating in the market decreases substantially.

The Consent Agreement

The proposed Consent Agreement effectively remedies the proposed acquisition's anticompetitive effects in the relevant product markets. Pursuant to the Consent Agreement, Mylan and Merck are required to divest certain rights and assets related to the Products to a Commission-approved acquirer no later than ten (10) days after the acquisition. Specifically, the proposed Consent Agreement requires that Merck divest its assets in the Products to Amneal.

The acquirer of the divested assets must receive the prior approval of the Commission. The Commission's goal in evaluating a possible purchaser of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed acquirer of divested assets must not itself present competitive problems.

Amneal, a small but growing generic manufacturer, is particularly well-positioned to manufacture and market its acquired products and compete effectively in those markets. Amneal develops, manufacturers, sells, and distributes generic pharmaceuticals within the United States. Moreover, Amneal will not present competitive problems in any of the markets in which it will acquire a divested asset because it currently does not compete in those markets. With its resources, capabilities, good reputation, and experience marketing generic products, Amneal is well-positioned to replicate the competition that would be lost with the proposed acquisition.

If the Commission determines that Amneal is not an acceptable acquirer of the assets to be divested, or that the manner of the divestitures to Amneal is not acceptable, the parties must unwind the sale and divest the assets within six (6) months of the date the Order becomes final to another Commission-approved acquirer. If the parties fail to divest within six (6) months, the Commission may appoint a trustee to divest the Products.

The proposed remedy contains several provisions to ensure that the divestitures are successful. The Order requires Mylan and Merck to provide transitional services to enable the

Commission-approved acquirer to obtain all of the necessary approvals from the FDA. These transitional services include technology transfer assistance to manufacture the Products in substantially the same manner and quality employed or achieved by Merck.

The Commission has appointed R. Owen Richards of Quantic Regulatory Services, LLC ("Quantic") to oversee the asset transfer and to ensure Mylan and Merck's compliance with all of the provisions of the proposed Consent Agreement. Mr. Richards is President of Quantic and has several years of experience in the pharmaceutical industry. He is a highly-qualified expert on FDA regulatory matters and currently advises Quantic clients on achieving satisfactory regulatory compliance and interfacing with the FDA. In order to ensure that the Commission remains