ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

In the Matter of Schering-Plough Corporation, File No. 071 0137

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Schering-Plough Corporation ("Schering-Plough"), which is designed to remedy the anticompetitive effects of its acquisition of Organon BioSciences N.V. ("Organon BioSciences") from Akzo-Nobel N.V. ("Akzo-Nobel"). Under the terms of the proposed Consent Agreement, Schering-Plough would be required to divest to Wyeth: (1) the Schering-Plough rights and assets necessary to develop, manufacture, and market live vaccines for the prevention and treatment of the Georgia 98 strain of infectious bronchitis virus in poultry; (2) the rights and assets necessary to develop, manufacture, and market live vaccines for the prevention and treatment of fowl cholera due to *P* in poultry; and (3) the rights and assets necessary to develop, manufacture, and market live vaccines for the prevention and treatment of *M* ("MG") in poultry.

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 the terms of a Letter of Intent dated March 12, 2007, Schering-Plough proposes to acquire from Akzo Nobel 100 percent of the outstanding shares of Organon BioSciences voting stock. 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 poultry vaccines: (1) live vaccines for the prevention and treatment of the Georgia 98 strain of infectious bronchitis virus in poultry; (2) live vaccines for the prevention and treatment of fowl cholera due to *P* in poultry; and (3) live vaccines for the prevention and treatment of *M* in poultry. 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 Parties and the Markets

The markets for the Georgia 98 strain of infectious bronchitis, fowl cholera, and live MG vaccines are highly concentrated, with Schering-Plough and Intervet accounting for significant market shares in each of these markets. The proposed acquisition would create a monopolist in the live Georgia 98 vaccine market and would give Schering-Plough shares of approximately

concentration levels in the United States in the market for live vaccines for the prevention and treatment of *M* in poultry.

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Entry into any relevant line of commerce would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition. Entry into any of these markets would require overcoming three major obstacles: lengthy development periods, USDA approval requirements, and customer acceptance. As a result, new entry into any of these markets sufficient to achieve a significant market impact within two years is unlikely.

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The markets for the Georgia 98 strain of infectious bronchitis, fowl cholera, and MG live vaccines are highly concentrated, with Schering-Plough and Intervet accounting for substantial shares of sales in each of these markets. The proposed acquisition would create a monopolist in the live Georgia 98 vaccine market and would give Schering-Plough shares of approximately eighty-five percent and seventy-two percent in the markets for live fowl cholera vaccine and live MG vaccines, respectively.

The competitive concerns can be characterized as unilateral in nature. Schering-Plough and Organon BioSciences are each other's closest competitors in all of the relevant markets. Consumers have benefitted from the price competition between Schering-Plough and Organon BioSciences. If unremedied, the proposed acquisition would likely cause higher prices and reduce incentives to improve service or product quality, resulting in significant harm to consumers in the U.S. markets for these vaccines.

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The proposed Consent Agreement remedies the competitive harm caused by the proposed transaction. Pursuant to the Consent Agreement, Schering-Plough must divest or license all of the assets relating to Schering-Plough's live vaccine for the Georgia 98 strain of infectious bronchitis (Avimune IB98), Intervet's live fowl cholera vaccine (CHOLERVAC-PM-1) and Schering-Plough's live MG vaccine (F VAX-MG)("the assets to be divested"), to the Fort Dodge division of Wyeth, within ten days after the date Schering-Plough acquires Organon BioSciences. The assets to be divested include research and development, customer, supplier and manufacturing contracts and any intellectual property including existing licenses, but excluding trademarks. Fort Dodge plans to bring all manufacturing of the three vaccines in-house to its own manufacturing facilities and to add the three to its own portfolio of poultry vaccines. While Fort Dodge undertakes the process of obtaining USDA regulatory approvals and bringing vaccine production in-house, Schering-Plough will provide Fort Dodge with the vaccines pursuant to a supply and transition services agreement with a term of two years, and an option to extend it another year, individually for each of the three vaccines, if required.

The acquirer of the divested assets must receive the prior approval of the Commission. The Commission's goal in evaluating possible purchasers 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.

Wyeth, headquartered in Madison, New Jersey, is a global leader in pharmaceuticals, consumer health care products and animal health care products. In 2006, it had net sales of $20 billion. Wyeth's Fort Dodge Animal Health division offers a broad range of biological and pharmaceutical products for the companion animal, equine, livestock, swine and poultry industries. Significantly, Wyeth already has an established poultry vaccine line comprised of internally developed vaccines as well as several vaccines that it has acquired and transferred to its manufacturing facilities. Fort Dodge has its own distribution network and an experienced sales force with existing relationships with major poultry producers. The three vaccines being divested to Fort Dodge are all established products that have been on the market for at least two years. Fort Dodge has its own manufacturing facilities with excess capacity and intends to bring the manufacturing of all of the products it is acquiring from Schering-Plough in-house. For these reasons, Wyeth is a strong buyer that appears well positioned to replace the competition lost by the acquisition.

If the Commission determines that Wyeth is not an acceptable acquirer of the assets to be divested, the parties must unwind the sale and divest the Products within six months of the date

technology, monitor the critical manufacturing and supply activities of the Respondent, ensure the Respondent's compliance with the Order and related agreements, respond to Commission needs, and perform other related services as may be required. Accordingly, the Commission has appointed Dr. Espeseth as the Interim Monitor Trustee.

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.