ANALYSIS OF PROPOSED AGREEMENT CONTAINING
CONSENT ORDERS TO AID PUBLIC COMMENT
In the Matter of Pfizer Inc. and Wyeth, File No. 091-0053, Docket No. C-4267

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") with Pfizer Inc. ("Pfizer"), which is designed to remedy the anticompetitive effects of its proposed acquisition of Wyeth. Under the terms of the Consent Agreement, Pfizer is required to divest to Boehringer Ingelheim Vetmedica, Inc. ("Boehringer") Pfizer's exclusive distribution rights for certain products in the area of equine influenza vaccines, Pfizer is ordered to divest to Boehringer Pfizer's equine herpesvirus vaccines, Pfizer is ordered to divest to Boehringer Pfizer's equine herpesvirus products. The assets for each of the divestitures include all of the relevant intellectual property, customer lists, research and development information, and regulatory materials, as well as two of Fort Dodge's three U.S. manufacturing facilities. These divestitures fully prese

Leptospira and Campylobacter fetus antigens. After the acquisition, Pfizer would have 83 percent of the $13 million modified-live 10-way market in the United States, with Intervet/Schering-Plough Animal Health ("ISP"), AgriLaboratories, Ltd. ("AgriLabs"), and BI accounting for 11 percent, 4 percent, and 2 percent, respectively. Pfizer also would control 76 percent of sales in killed 10-way vaccines, leaving Novartis with 18 percent and AgriLabs with 6 percent of this $9 million market. Finally, in the lepto/vibrio vaccine market, Pfizer and Fort Dodge collectively account for almost 39 percent of this $2.6 million market, and Novartis leads with 41 percent.

Cattle pasteurella vaccines are used to prevent pneumonia as well as lesser respiratory infections in cows caused by Pasteurella multocida and Mannheimia haemolytica bacteria. Pfizer, Fort Dodge, BI, ISP, and Merial are the only significant suppliers of products in these markets in the United States. The proposed acquisition would reduce the number of competitors in these markets, leaving Pfizer significantly larger than any of its remaining competitors.

Lactating-cow and dry-cow mastitis treatments are used to treat infections of the udder that occur during either lactation or the dry period between pregnancies. The markets for lactating-cow and dry-cow mastitis treatments are highly concentrated, with Pfizer and Fort Dodge together accounting for more than 90 percent of sales in each of these markets.

Broad-spectrum antibiotic products with low milk-withholding times can be used to treat a large variety of infections that affect dairy cows.[1] Pfizer's products are considered the most effective antibiotics for dairy cows and have a zero-day withholding period, while Fort Dodge's product has a low withholding period of two to four days. A generic version of one of Pfizer's products was recently introduced. As a result of the proposed acquisition, Pfizer would have a near monopoly in this $162 million market.

Cattle macrocyclic lactone parasiticides are the newest and most effective class of cattle parasiticides in the United States. They are effective against both internal and external parasites. There are only three branded players in the $118 million U.S. market: Pfizer, Fort Dodge, and Merial. Although generic versions of Merial's product are available, there are no generic versions of Pfizer's or For

[1] To ensure that antibiotic-contaminated milk is not distributed, the United States Food and Drug Administration ("FDA") has set "withholding times" for each antibiotic product and mandates that any milk that is produced during the withholding period be discarded. A principal consideration for dairy farmers in purchasing antibiotics, therefore, is how quickly they can resume milk production after treatment.

the United States. After the proposed acquisition, ISP would be the only remaining constraint on Pfizer's ability to raise prices, accounting for 67 percent of this $16 million market. Pfizer would control the remaining 33 percent of the market.

Beyond cattle health products, Pfizer and Fort Dodge are also two of only four major suppliers in the relevant companion animal vaccines and pharmaceuticals markets. In the majority of these markets, the transaction would reduce the number of competitors from four to three and give Pfizer between 50 and 100 percent of the market. As in the cattle vaccines area, Pfizer and Fort Dodge have broad and significantly overlapping portfolios of companion animal vaccines. Customers can choose the specific vaccine products that most closely match their needs based on several factors, including, among others, vaccination protocols recommended by veterinarians and disease risSffs(ine)1s(tom)11(ent dis).(ir)]TJ 0 Tc 0 TJ 36 -27.6 TdCon ne of b7(cin

Feline combination vaccines are used to prevent common feline diseases, such as feline panleukopenia, rhinotracheitis, chlamydia, and calicivirus. Pfizer, Fort Dodge, ISP, and Merial are the only significant suppliers of feline combination vaccines in the United States. Total U.S. sales of feline combination vaccines are $28 million. The proposed acquisition would reduce the number of significant suppliers of feline combination vaccines from four to three, with Pfizer's sales considerably greater t

number of suppliers from four to three, with Pfizer significantly larger than its two remaining competitors.

Equine joint-injected steroids can be used to reduce joint inflammation, treat osteoporosis, and prevent lameness in horses. Pfizer has a 60 percent share of this $7.3 million market, while Fort Dodge has a 40 percent share. The proposed acquisition would create a monopoly in the market for equine joint-injected steroids in the United States.

III. Entry

Entry into the manufacture and sale of the relevant animal health vaccine and pharmaceutical markets would not be timely, likely, or sufficient in its magnitude, character, or scope to deter or counteract the anticompetitive effects of the proposed acquisition. Developing and obtaining United States Department of Agriculture approval (in the case of vaccines) for the manufacture and sale of each of the relevant products can take as many as five years due to substantial regulatory, technological, and intellectual property barriers. Similarly, obtaining FDA approval (in the case of pharmaceutical products) can take five to seven years for a currently developed product and as many as ten or more years for an entirely new product.

In addition to the regulatory, developmental, and manufacturing hurdles facing a potential entrant, many of the markets at issue are characterized by particular conditions that make new entry unlikely. For example, some products, such as vaccines for cattle, equine, and companion animals, are particularly difficult to manufacture, have relatively small profit opportunities, and have a high potential for adverse reactions and product failure. In other markets, such as those for companion animal vaccines, a substantial initial investment is necessary because veterinarians tend to purchase all their vaccines from a single supplier; as a result, a new entrant must develop a large portfolio of vaccines in order to be a significant competitor.

IV. Effects of the Acquisition

The proposed acquisition would cause significant competitive harm to consumers in the relevant U.S. markets for cattle, companion animal, and equine health products by eliminating actual, direct, and substantial competition between Pfizer and Wyeth. The transaction would increase the likelihood that Pfizer iveantiamarketelpa csubsto markd Wypote11(ts ai

V. The Consent Agreement

The proposed Consent Agreement preserves competition in each of the relevant markets alleged in the complaint by requiring that Pfizer divest the following assets to Bho later tha ten days after the acquisition: all of the Fort Dodge assets relating to killed cattle re

The proposed remedy also allows for the appointment of an Interim Trustee, experienced in obtaining regulatory approval and the manufacture of biologics, to oversee the required technology transfers. As part of the proposed remedy, Pfizer is required to execute an agreement conferring all rights and powers necessary for the Interim Trustee to satisfy his responsibilities under the Order to assure successful divestitures. The Commission has appointed Dr. Stephen J.D. Bell of Tunnell Consulting to be the Interim Monitor and it is anticipated that he will obtain support and assistance from his colleague, Mr. Arlo Millen. The monitors will ensure that the Commission remains informed about the status of the proposed divestitures and asset transfers.

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 Consent Agreement or to modify its terms in any way.