



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 company 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. Nestle, S.A. is a corporation organized, existing, and doing business under and by the virtue of the Swiss Confederation, with its headquarters address at Avenue Nestle, 55, 1800 Vevey, Switzerland.

4. Nestle holds a controlling interest in Alcon. Alcon is a corporation organized, existing, and doing business under and by virtue of the laws of the Swiss Confederation, with its principal executive offices at Bösch 69, P.O. Box 62 Hünenberg, Switzerland. Nestle, among other things, is engaged in the research, development, manufacture, and sale of human pharmaceutical products in the United States through Alcon.

## **III. THE PROPOSED ACQUISITION**

5. On January 4, 2010, Novartis exercised a call option under the April 6, 2008 Purchase and Option Agreement (the “Acquisition Agreement”) between Novartis and Nestle whereby Novartis proposes to acquire shares that represent approximately 52 percent of the outstanding stock of Alcon for approximately

## **VI. ENTRY CONDITIONS**

9. Entry into the relevant markets described in Paragraphs 6 and 7 would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. Entry would not take place in a timely manner because the combination of drug development times and U.S. Food and Drug Administration approval requirements take at least two years. In addition, entry is not likely because the relevant markets are relatively small, limiting sales opportunities for any potential new entrant.

## **VII. EFFECTS OF THE ACQUISITION**

10. The effect of the Acquisition, if consummated, may be to substantially lessen competition and to create a monopoly in the relevant market 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, by eliminating actual, direct, and substantial competition between Novartis and Alcon in the market for injectable miotics products, thereby: (1) increasing the likelihood that Novartis will be able to unilaterally exercise market power in this market, and (2) increasing the likelihood that customers would be forced to pay higher prices.

## **VIII. VIOLATIONS CHARGED**

11. The Acquisition Agreement described in Paragraph 5 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

12. 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 Sec