ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT
In the Matter of Hikma Pharmaceuticals PLC
File No. 111-0051, Docket No. C-4320

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Hikma Pharmaceuticals PLC ("Hikma") that is designed to remedy the anticompetitive effects of Hikma's acquisition of certain assets from Baxter Healthcare Corporation, Inc. ("Baxter"). Under the terms of the proposed Consent Agreement, Hikma would be required to divest to X-Gen Pharmaceuticals, Inc. ("X-Gen") all of Hikma's rights and assets relating to its generic injectable phenytoin and generic injectable promethazine products.

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, modify it, or make final the Decision and Order ("Order").

Pursuant to an Asset Purchase Agreement dated October 29, 2010, Hikma proposes to acquire Baxter's generic injectable pharmaceutical business in a transaction valued at approximately $111.5 million ("Proposed Acquisition"). The assets to be sold include chronic pain, anti-infective, and anti-emetic products, along with Baxter's Cherry Hill, New Jersey manufacturing facility and Memphis, Tennessee warehouse and distribution center. The Commission's Complaint alleges that the Proposed Acquisition, if

Generic injectable promethazine is used to relieve or prevent some types of allergies or allergic reactions, to prevent and control motion sickness, nausea, vomiting, and dizziness, and to help people go to sleep and control their pain or anxiety before or after surgery. Sales of generic injectable promethazine totaled $17 million in 2009. The market for generic injectable promethazine is highly concentrated. Only three companies currently sell generic injectable promethazine in the United States: Hikma, Baxter, and Hospira. Hospira's competitive significance in this market is limited because it only offers a premium-priced pre-filled syringe, while Hikma and Baxter offer lower priced ampules and vials that appeal to a broader range of customers. A fourth company has approval to sell generic injectable promethazine in the United States and has historically offered the product, but it is not currently manufacturing the product and its re-entry date is currently unknown. Thus, the acquisition would result in a market with only one low-cost competitor.

Entry

Entry into the markets for the manufacture and sale of generic injectable phenytoin and generic injectable promethazine would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Entry would not take pla

The proposed Consent Agreement remedies the competitive concerns the acquisition raises by requiring Hikma to divest its generic injectable phenytoin and generic injectable promethazine products to X-Gen, which will purchase all rights currently held by Hikma. X-Gen is a New York-based generic injectable pharmaceutical company with 40 active products and an active product development pipeline. With its experience in generic injectable markets and strong ties to manufacturing partners, X-Gen is expected to replicate the competition that would otherwise be lost with the Proposed Acquisition.

If the Commission determines that X-Gen is not an acceptable acquirer of the assets to be divested, or that the manner of the divestitures is not acceptable, the parties must unwind the sale to X-Gen and divest the phenytoin and promethazine product lines, within six months of the date the Order becomes final, to a Commission-approved acquirer. The Commission may appoint a trustee to divest t