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ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

In the Matter of Novartis AG
File No. 121-0144

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Novartis AG ("Novartis") that is designed to remedy the anticompetitive effects of Novartis's acquisition of Fougera Holdings Inc. ("Fougera") in several generic pharmaceutical markets. Under the terms of the proposed Consent Agreement, Novartis is required to: (1) terminate Novartis's marketing agreement with Tolmar, Inc. ("Tolmar") with respect to the currently marketed products generic

generic suppliers has a direct impact on pricing. Customers and competitors alike have confirmed that the price of a generic pharmaceutical product decreases with the entry of the second, third, and even fourth and fifth generic competitor. Further, customers generally believe that having at least four suppliers in a generic pharmaceutical market produces the most competitive prices.

Evidence gathered during our investigation indicates that anticompetitive effects are likely to result from a decrease in the number of independent competitors in the markets at issue. The Proposed Acquisition, by reducing an already limited number of competitors or potential competitors in each of these markets, would cause anticompetitive harm to U.S. consumers by increasing the likelihood of higher post-acquisition prices. In the market for generic calcipotriene topical solution, Novartis and Fougera are two of only three suppliers. In the lidocaine-prilocaine cream 30 gram tube market, Novartis and Fougera are two of only three suppliers of the product, and the Proposed Acquisition would eliminate Fougera as an independent competitor to Novartis leaving only Hi-Tech. In the generic lidocaine-prilocaine cream 5-5 gram tubes market, the Acquisition would result in a merger to monopoly. In the generic metronidazole gel market, Novartis and Fougera are two of four competitors, and combined, Novartis and Fougera represent 55 percent of the market. In all of these markets, industry participants have indicated that the presence of Fougera as a competitor has allowed them to negotiate lower prices.

Finally, the Acquisition would eliminate signif[illegible] calcipotriene topical solution, generic lidocaine-prilocaine cream, generic metronidazole topical gel, and generic diclofenac sodium gel, the Commission may appoint a trustee to effect the return of such rights.

The proposed remedy contains several provisions to ensure that the transfer of rights back to Tolmar is successful. The Consent Agreement contains an Order to Maintain Assets that requires Novartis to continue to market the Marketed Divestiture Products in a manner that maintains the full economic viability and marketability of the businesses until Tolmar directs Novartis to cease marketing the Marketed Divestiture Products or Tolmar's new marketing partner commences the distribution, marketing, and sale of the Marketed Divestiture Products.

The Commission appointed William Rahe of Quantic Regulatory Services, LLC to act as an interim monitor to assure that Novartis expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Consent Agreement. In order to ensure that the Commission remains informed about the status of the returned rights and assets, the Consent Agreement requires Novartis to file reports with the interim monitor who will report in writing to the Commission concerning performance by Novartis of its obligation under the Consent Agreement.

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