

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT**
In the Matter of Akorn Enterprises, Inc. and Hi-Tech Pharmacal Co., Inc.
File No. 131-0221, Docket No. C-4452

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Akorn Enterprises, Inc. (“Akorn”) that is designed to remedy the anticompetitive effects in five generic pharmaceutical markets resulting from Akorn’s acquisition of Hi-Tech Pharmacal Co., Inc. (“Hi-Tech”). Under the terms of the proposed Consent Agreement, the parties are required to divest

ent has been placed on the public record for thirty days for
ersons. Comments received during this period will
er thirty days, the Commission will again evaluate the
with the comments received, in order to make a final
raw from the proposed Consent Agreement, or make final

Plan of Merger dated August 26, 2013, Akorn proposes to
Hi-Tech, for approximately \$640 million (the “Proposed
es in its Complaint that the Proposed Acquisition, if
7 of the Clayton Act, as amended, 15 U.S.C. § 18, and
ission Act, as amended, 15 U.S.C. § 45, by lessening
.S. markets for the following pharmaceutical products: (1)
ycin ointment, (3) generic Quixin drops, (4) generic
A cream. The proposed Consent Agreement will remedy
e competition that would otherwise be eliminated by the

Markets

uld reduce the number of suppliers in the relevant markets,
ed number of market participants. In pharmaceutical
tion, price generally decreases as the number of generic
he reduction in the number of suppliers within each
nd substantial anticompetitive effect on pricing.

uld reduce current competition in markets for two generic
eric Ciloxan drops and generic Quixin drops--as well as
kets for generic Xylocaine jelly and generic EMLA cream,
on products. The structure of these markets is as follows:

x The generic Ciloxan ophthalmic drops market currently has four suppliers: Akorn, with a market share of approximately 12%, Hi-Tech, with a market share of approximately 16%, Novartis Corporation (“Novartis”), with a market share of approximately 47%, and PACK Pharmaceuticals (“PACK”), with a market share of approximately 25%. The proposed transaction would reduce the number of suppliers in this market from four to three, and would give the merged firm a market share of approximately 28%.

x The generic Quixin ophthalmic drops market currently has three suppliers: Akorn, with a market share of approximately 15%, Hi-Tech, with a market share of approximately 23%, and PACK, with a market share of approximately 62%. The proposed transaction would reduce the number of suppliers in this market from three to two, and would give the merged firm a market share of approximately 38%.

x The generic Xylocaine jelly market has three suppliers: Akorn, with a market share of approximately 39%, Hi-Tech, with a market share of approximately 14%, and Amphastar Pharmaceuticals, Inc. (“Amphastar”), with a market share of approximately 47%. The proposed transaction would reduce the number of suppliers of generic Xylocaine from three to two, and would give the merged firm a market share in excess of 50%.

x The generic EMLA crea10(e)4(num)-2(be)4(r)3(of)w 1. -0.00681(e o)-4(f)-1()JTJ 0 Tc 0 1.15 TD [(th)

Effects

The Proposed Acquisition would likely

becomes final. In that circumstance, the Commission may appoint a trustee to divest the Products if the parties fail to divest the Products as required.

The proposed Consent Agreement contains several provisions to help ensure that the divestitures are successful. The Order requires Akorn and Hi-Tech to take all action to maintain the economic viability, marketability, and competitiveness of the products to be divested until such time that they are transferred to a Commission-approved acquirer. Depending on the product, Akorn or Hi-Tech must transfer their respective manufacturing technologies for the Products to WatsonP(-)Tj -0.(i)-2(-e)4(ii2q4sTd [(P)s)-1()-4(n)](s)1(io(n)]0(at0()-10(f)3(or)3())TJ -0.004 Tc 0.