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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

In the Matter of	)	
AKORN, INC., a corporation;	)	**Docket No. C-4452**
and	)	
HI-TECH PHARMACAL CO., INC, a corporation.	)	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Akorn, Inc. ("Akorn"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Hi-Tech Pharmacal Co., Inc. ("Hi-Tech"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45, that such acquisition, if consummated, would violate 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, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Akorn is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its corporate head office and principal place of business located at 1925 W. Field Court, Suite 300, Lake Forest, Illinois, 60045.

2. Respondent Hi-Tech is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head office and principal place of business located at 369 Bayview Avenue, Amityville, New York, 11701.

3. Each 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 FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

4. Pursuant to an Agreement and Plan of Merger dated August 26, 2013, Akorn proposes to acquire Hi-Tech for approximately $640 million (the "Acquisition"). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKETS

5. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the development, license, manufacture, marketing, distribution, and sale of the following pharmaceutical products:

a. generic ophthalmic drops containing 0.3% ciprofloxacin hydrochloride ("generic Ciloxan drops");

b. generic ophthalmic ointment containing 0.5% erythromycin ("generic Ilotycin ointment"); r.47

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would increase the Herfindahl-Hirschman Index concentration ("HHI") by 384, from 3234 to a post-merger total of 3618, and would create a merged entity having a market share in excess of 28%.

8. Generic Ilotycin ointment is an antibiotic used to treat and prevent bacterial eye infections. Three firms—Akorn, Bausch & Lomb, Inc. ("Bausch & Lomb"), and Perrigo Company plc ("Perrigo")—currently supply generic Ilotycin ointment in this highly concentrated market, which has an HHI in excess of 4000. Hi-Tech is likely to be the next entrant into this market as it is the only firm expected to file an Abbreviated New Drug Application ("ANDA") with the U.S. Food and Drug Administration ("FDA") in the foreseeable future. Thus, the Acquisition would reduce the number of suppliers of generic Ilotycin ointment from four to three.

9. Generic Quixin drops are an antibiotic used to treat bacterial eye infections. The market for generic Quixin drops is highly concentrated with only three current suppliers—Akorn, Hi-Tech, and Nexus, which distributes its product through PACK. Akorn has a market share of approximately 15% and Hi-Tech has a market share of approximately 23%. The Acquisition would reduce the number of suppliers of generic Quixin drops from three to two, would increase the HHI by 690, from 4598 to a post-merger total of 5288, and would create a merged entity having a market share in excess of 38%.

10. Generic Xylocaine jelly is a topical jelly used to treat and prevent pain in

V. ENTRY CONDITIONS

12. Entry into the relevant markets described in Paragraphs 5 and 6 would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. De novo entry would not take place in a timely manner because the combination of drug development times and FDA approval requirements would be lengthy. In addition, no other entry is likely to occur such that it would be timely and sufficient to deter or counteract the competitive harm likely to result from the Acquisition.

VI. EFFECTS OF THE ACQUISITION

13. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets 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, in the following ways, among others:

a. by eliminating actual, direct, and substantial competition between Akorn and Hi-Tech and reducing the number of significant competitors in the markets for (1) generic Ciloxan drops; (2) generic Quixin drops; (3) generic Xylocaine jelly; and (4) generic EMLA cream, thereby increasing the likelihood that: (a) Akorn would be able to unilaterally exercise market power in these markets; (b) the remaining competitors would engage in coordinated interaction between or among each other; and (c) customers would be forced to pay higher prices; and

b. by eliminating future competition between Akorn and Hi-Tech and reducing the number of generic competitors in the market for generic Ilotycin ointment, thereby (a) increasing the likelihood that the combined entity would forego or delay the launch of this product and (b) increasing the likelihood that the combined entity would delay, eliminate, or otherwise reduce the substantial additional price competition that would have resulted from an additional supplier of this product.

VII. VIOLATIONS CHARGED

14. The Agreement and Plan of Merger described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

15. The Acquisition described in Paragraph 4, if consummated, would constitute a 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this eleventh day of April, 2014 issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: