

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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

**In the Matter of:**

**CONCORDIA PHARMACEUTICALS  
INC.,**  
       **a corporation;**

**CONCORDIA HEALTHCARE CORP., a  
corporation;**

**PAR PHARMACEUTICAL, INC., a  
corporation;**

**PAR PHARMACEUTICAL HOLDINGS,  
INC., a corporation; and**

**TPG PARTNERS VI, L.P.**

**Docket No.:**

**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, et seq., and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Concordia Pharmaceuticals Inc. (“Concordia”), Concordia Healthcare Corp. (collectively “Concordia Entities”), Par Pharmaceutical, Inc., Par Pharmaceutical Holdings, Inc. and TPG Partners VI, L.P. (collectively “Par”) have violated Section 5 of the FTC Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges as follows:

**Nature of the Case**

1. This action challenges an agreement not to compete between Concordia and Par relating to generic equivalents of the prescription drug Kapvay. Until May 15, 2015, Concordia and Par were the only two firms permitted to market generic Kapvay. Rather than competing against one another, however, Concordia agreed not to sell an authorized generic version of

Kapvay in exchange for a share of the revenues Par earns as the sole seller of generic Kapvay. This agreement not to compete likely resulted in higher prices for consumers.

### **The Respondents and Jurisdiction**

2. Concordia Pharmaceuticals Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Country of Barbados, with its office and principal place of business located at Chancery Chambers, Chancery House, High Street Bridgetown, BB Barbados 11128. Concordia Pharmaceuticals Inc. is a subsidiary of Concordia Healthcare Corp.

3. Concordia Healthcare Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the Province of Ontario, Canada, with its office and principal place of business located at 277 Lakeshore Road East, Suite 302, Oakville, Ontario, L6J 1H9, Canada.

4. Par Pharmaceutical, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 100 Park Avenue, New York, New York 10022.





25. Par filed an ANDA seeking FDA approval to launch a generic version of Kapvay on March 4, 2011. As the first company to file a substantially complete ANDA with a paragraph IV certification under 21 U.S.C. §355(j), Par was eligible for 180 days of market exclusivity. Par was not sued for patent infringement.

26. Concordia acquired the rights to Kapvay in May, 2013. Prior to generic entry, annual U.S. sales of Kapvay were \$72 million.

27.

34. This lack of competition likely permitted Par to charge supra-competitive prices for generic Kapvay.

**The Agreement Not to Compete between Concordia and Par is Not Justified**

35. The agreement not to compete between Concordia and Par is not reasonably necessary to achieve any efficiency-enhancing purpose.

36. Par's payments to Concordia on its sales of generic Kapvay cannot be justified as compensation for rights to intellectual property. Concordia's '100 patent expired only seven days into the license term. Under the agreement, however, Par's payments would continue for five years from the execution date. In substance, the payments, though purportedly for intellectual property, are the mechanism for Par to share with Concordia the supra-competitive profits preserved by their agreement not to compete.

**Violation Charged: Restraint of Trade**

37. As set forth above, Par agreed to pay Concordia to refrain from launching an authorized generic version of Kapvay. The acts, policies and practices of Concordia and Par, as alleged herein, unreasonably restrained trade and constitute an unfair method of competition in or affecting commerce in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, as amended. Such acts, practices, or the effects thereof, will continue or recur in the absence of appropriate relief.