ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

In the Matter of C.H. Boehringer Sohn AG & Co. KG

File No. 161-0077

INTRODUCTION

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from C.H. Boehringer Sohn AG & Co. KG ("Boehringer Ingelheim"), which is designed to remedy the anticompetitive effects of Boehringer Ingelheim's acquisition of the Merial Animal Health business ("Merial") from Sanofi. Under the terms of the proposed Decision and Order ("Order") contained in the Consent Agreement, Boehringer Ingelheim is required to divest its relevant U.S. companion animal vaccine business to Eli Lily and Company, which participates in the animal health industry through its Elanco Animal Health ("Elanco") division. Boehringer Ingelheim is also required to divest its U.S. Cydectin parasiticide product to Bayer AG ("Bayer").

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again evaluate the proposed Consent Agreement, along with the comments received, in order to maksn oh(2d6-wo((nt)- nt)- J r)-

Ingelheim, Merial, Zoetis, and Merck—as the canine vaccine industry. In 2015, these four companies had market shares of approximately 28%, 33%, 16%, and 23%, respectively, of all revenues from feline vaccines sold in the United States and comparable shares in each relevant market.

Merial and Boehringer Ingelheim are the only two macrocyclic lactone cattle parasiticide suppliers that offer "zero-day milk withhold" products—Cydectin and Eprinex, respectively. The Proposed Acquisition would eliminate the competition between them, effectively leaving dairy cattle customers with a sole supplier.

Sheep Parasiticides

Sheep parasiticides are critical for optimizing wool and meat production. Sheep parasiticides utilize the same compounds as cattle parasiticides, but use a different route of administration. Because a sheep's wool and skin prevent the absorption of topical products and the thickness of a sheep's wool makes injections difficult, customers view oral administration as the only viable option for sheep parasiticides. Both macrocyclic lactones and benzimidazoles can be used as sheep parasiticides, but benzimidazoles are not economic substitutes for macrocyclic lactones in most cases because they do not treat external parasites and are less efficacious.

Merial and Boehringer Ingelheim are the two primary suppliers of macrocyclic lactone sheep parasiticides. Boehringer Ingelheim offers Cydectin Oral Drench and Merial offers Ivomec Oral Drench. Following the Proposed Acquisition, the merged firm would control more than 78% of this market. The other macrocyclic lactone sheep parasiticides are generic versions of the Merial product, which are of limited competitive significance.

Relevant Geographic Market

The United States is the relevant geographic market in which to assess the competitive effects of the Proposed Acquisition. The USDA must approve companion animal vaccines before they are sold in the United States. Cattle and sheep parasiticides must be approved by the FDA before being sold in the United States. Thus, products sold outside the United States, but not approved for sale in the United States, are not alternatives for U.S. consumers.

ENTRY

Entry into the U.S. markets for companion animal vaccines and cattle and sheep parasiticides would not be timely, likely or sufficient in magnitude, character and scope to deter or counteract the anticompetitive effects of the Proposed Acquisition. Three major obstacles stand in the way of a prospective entrant into the relevant markets: lengthy des(w -C /TT)lngtetis,

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The Commission has agreed to appoint a Monitor to ensure that Boehringer Ingelheim complies with all of its obligations pursuant to the Consent Agreement and to keep the Commission informed about the status of the transfer of the rights and assets to Elanco and Bayer.

The Commission's goal in evaluating possible purchasers of divested rights and assets is to maintain the competitive environment that existed prior to the Proposed Acquisition. If the Commission determines that either buyer is not an acceptable acquirer, or that the manner of the divestiture is not acceptable, the proposed Order requires the parties to unwind the sale and then divest the products to another Commission-approved acquirer within six months of the date that the proposed Order becomes final. The proposed Order further allows the Commission to appoint a trustee in the event the parties fail to divest the products.

The purpose of this analysis is to facilitate public comment on the proposed Consent