UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Maureen K. Ohlhausen
Terrell McSweeny

In the Matter of	)	
C.H. BOEHRINGER SOHN AG & CO. KG	)	**Docket No. C-4601**
a corporation;	)	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent C.H. Boehringer Sohn AG & Co. KG ("Boehringer Ingelheim"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire the Merial Animal Health business ("Merial") from Sanofi, a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the 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 Boehringer Ingelheim is a corporation organized, existing and doing business under and by virtue of the laws of the Federal Republic of Germany, with its headquarters address located at Binger Strasse 173, 55216, Ingelheim am Rhein, Germany, and the address of its United States subsidiary, Boehringer Ingelheim Vetmedica, Inc., located at 3902 Gene Field Rd., St. Joseph, Missouri 64506.

2. Respondent Boehringer Ingelheim is engaged in, among other things, the research, development, manufacture, distribution, and sale of human pharmaceutical products, as well as animal health products through its Boehringer Ingelheim Vetmedica, Inc. division.

3. 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 ACQUIRED COMPANY

4. Sanofi is a corporation organized, existing and doing business under and by virtue of the laws of the French Republic, with its headquarters address located at 54, rue La Boétie, 75008, Paris, France, and the address of its United States subsidiary, Sanofi US, located at 55 Corporate Drive, Bridgewater, New Jersey 08807.

5. Sanofi is engaged in, among other things, the research, development, manufacture, distribution, and sale of human pharmaceutical products, as well as animal health products through its Merial Animal Health division.

6. Sanofi 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.

III. THE PROPOSED ACQUISITION

7. Pursuant to an Exclusivity Agreement dated December 15, 2015, Boehringer Ingelheim proposes to swap its consumer health care business for Sanofi's Merial animal health business (the "Acquisition"). In the proposed swap, Boehringer Ingelheim obtains Merial, valued at $13.53 billion, and Sanofi obtains Boehringer Ingelheim's Consumer Health Care business unit, valued at $7.98 billion, as well as cash compensation of $5.54 billion. The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

IV. THE RELEVANT MARKETS

8. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the research, development, manufacture, and sale of:

   a. canine vaccines for the prevention of disease caused by canine distemper virus, canine parvovirus, leptospirosis, canine adenovirus, canine parainfluenza virus, canine coronavirus, borreliosis ("Lyme disease"), and/or *Bordetella bronchiseptica* bacterium;

   b. feline vaccines for the prevention of disease caused by panleukopenia, calicivirus, viral rhinotracheitis, *Chlamydia psittaci* bacterium, and/or feline leukemia;

   c. companion animal vaccines for the prevention of rabies virus;

   d. macrocyclic lactone cattle parasiticides; and

e. macrocyclic lactone sheep parasiticides.

9. For the purposes of this Complaint, the United States is the relevant geographic area in which to assess the competitive effects of the Acquisition in the relevant lines of commerce.

V. THE STRUCTURE OF THE MARKETS

10. The markets for canine vaccines in the United States are highly concentrated. Boehringer Ingelheim, Merial, Zoetis, Inc. ("Zoetis"), and Merck & Co. ("Merck") are the only four companies offering or likely to offer canine vaccines for the prevention of canine distemper virus, canine parvovirus, leptospirosis, canine adenovirus, canine parainfluenza virus, canine coronavirus, Lyme disease, and/or *Bordetella bronchiseptica* bacterium in the United States. In 2015, Boehringer Ingelheim, Merial, Zoetis, and Merck had shares representing approximately 30%, 11%, 35%, and 24%, respectively, of all canine vaccines sold in the United States and comparable shares in each relevant market, except *Bordetella bronchiseptica* bacterium, where Merial is the next likely entrant. The proposed transaction would reduce the number of current or likely competitors in each market from four to three.

11. The markets for feline vaccines in the United States are highly concentrated. Boehringer Ingelheim, Merial, Zoetis, and Merck are the only four companies offering feline vaccines for the prevention of panleukopenia, calicivirus, viral rhinotracheitis, *Chlamydia psittaci* bacterium, and/or feline leukemia in the United States. In 2015, these four companies represented approximately 28%, 33%, 16%, and 23%, respectively, of all feline vaccines sold in the United States and comparable shares in each relevant market. The proposed transaction would combine the two leading feline vaccine suppliers, reducing the number of competitors in each market from four to three.

12. The market for rabies vaccines in the United States is highly concentrated. Boehringer Ingelheim, Merial, Zoetis, and Merck are the only four significant suppliers of rabies vaccines in the United States, with market shares of 10%, 65%, 13%, and 12%, respectively.

13. The market for macrocyclic lactone cattle parasiticide in the United States is highly concentrated. Boehringer Ingelheim, Merial, and Zoetis are the three primary participants in the macrocyclic lactone cattle parasiticide market. Merial offers three brands: Ivomec, Eprinex, and LongRange that collectively accounted for 45% of the macrocyclic lactone cattle parasiticide market in 2015. Boehringer Ingelheim's Cydectin, a parasiticide that is functionally identical to Ivomec and Eprinex for beef cattle, accounted for 22% of the macrocyclic lactone cattle parasiticide market in 2015. Zoetis offers Dectomax, a macrocyclic lactone similar to Merial's and Boehringer Ingelheim's products, which accounted for 17% of macrocyclic lactone cattle parasiticide sales in 2015. Eprinex and Cydectin are the only two macrocyclic lactone cattle parasiticides with a "zero-day milk withhold" required for dairy cattle. The Acquisition would consolidate the most significant competitors in the macrocyclic lactone cattle parasiticide market, would

produce a single firm controlling more than 65% of the relevant market, and would consolidate the only two suppliers of "zero-day milk withhold" macrocyclic lactone cattle parasiticides.

14. The parties are the two primary suppliers of macrocyclic lactone sheep parasiticides. Boehringer Ingelheim offers Cydectin Oral Drench, and Merial offers Ivomec Oral Drench. In 2015, Cydectin Oral Drench and Ivomec Oral Drench approximated 57% and 22%, respectively, of total sales in the United States. Following the acquisition, the merged firm would control more than 78% of this market.

VI. ENTRY CONDITIONS

15. Entry into the relevant markets described in Paragraph 8 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 require significant investment to, among other things, develop products, obtain regulatory approvals, and effectively establish recognized brands. Entry would be unlikely because the required investment would be difficult to justify given the sales opportunities in the affected markets. Entry would also not be timely because drug development times and FDA or USDA approval requirements are 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.

VII. EFFECTS OF THE ACQUISITION

16. 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, by, among other things:

    a. eliminating actual or future, direct, and substantial competition between Boehringer Ingelheim and Merial in the relevant markets;

    b. increasing the likelihood that the merged entity will unilaterally exercise market power in the relevant markets;

    c. increasing the likelihood of coordinated interaction between or among suppliers in the relevant markets;

    d. increasing the likelihood that consumers would be forced to pay higher prices or accept reduced service.

VIII. VIOLATIONS CHARGED

17. The Exclusivity Agreement described in Paragraph 7 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

18. The Acquisition described in Paragraph 7, 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 twenty-eighth day of December, 2016, issues its Complaint against said Respondents.

By the Commission.

April J. Tabor
Acting Secretary

SEAL: