UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Joseph J. Simons, Chairman**
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of	)	
ABBVIE INC.,	)	
a corporation;	)	
	)	**DOCKET NO. C-4713**
and	)	
ALLERGAN PLC,	)	
a public limited company.	)	

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 AbbVie Inc. ("AbbVie"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire the equity interests of Respondent Allergan plc ("Allergan"), a public limited company 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. RESPONDENTS

1. Respondent AbbVie Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware with its executive offices and principal place of business located at 1 North Waukegan Road, North Chicago, Illinois 60064.

2. Respondent Allergan plc is a public limited company organized, existing, and doing business under, and by virtue of, the laws of the Republic of Ireland with its principal executive offices located at Clonshaugh Business and Technology Park, Coolock Dublin, D17 E400, Ireland. Allergan's United States address for service of process is, as follows: Chief Legal Officer, Allergan plc, 5 Giralda Farms, Madison, New Jersey 07940.

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 engages in business that 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 a Scheme of Arrangement under Irish law, AbbVie proposes to acquire all of the voting securities of Allergan for approximately $63 billion (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. The relevant lines of commerce in which to analyze the effects of the Acquisition are:

   a. the sale of prescription drugs to treat exocrine pancreatic insufficiency ("EPI");

   b. the development and sale of Interleukin-23 ("IL-23") inhibitor drugs for the treatment of moderate-to-severe Crohn's disease; and

   c. the development and sale of IL-23 inhibitor drugs for the treatment of moderate-to-severe ulcerative colitis.

6. The United States is the relevant geographic area in which to assess the competitive effects of the Acquisition in the relevant line of commerce.

IV. THE STRUCTURE OF THE MARKETS

7. EPI is a condition that results from a deficiency of pancreatic enzymes. Patients who have EPI cannot properly digest fats, proteins, and carbohydrates in the foods they eat and, as a result, may suffer from malnutrition and have uncomfortable gastrointestinal symptoms when they eat. Only four companies sell prescription drugs to treat EPI in the United States: AbbVie, Allergan, Vivus Inc. and Chiesi USA, Inc. AbbVie is the clear market leader with its product, Creon, and Allergan is the second-largest supplier, with

its product, Zenpep. Together, AbbVie and Allergan account for more than 95 percent of the market for drugs to treat EPI.

8. Ulcerative colitis and Crohn's disease are the most common causes of chronic inflammation of the digestive tract. Though they are different diseases—the primary difference between them is the location of the inflammation in the digestive tract—the treatments are similar. A variety of drugs are approved to treat ulcerative colitis and Crohn's disease, but the effectiveness of most drugs is limited. The IL-23 inhibitors are a new class of drugs to treat both diseases. Johnson & Johnson's Stelara is the only IL-23 inhibitor currently approved to treat moderate-to-severe Crohn's disease and ulcerative colitis in the United States. Stelara is both an IL-23 inhibitor and an Interleukin-12 inhibitor. Only three other companies—AbbVie, Allergan, and Eli Lilly and Company—have IL-23 inhibitors in late-stage development. Johnson & Johnson also has a second IL-23 inhibitor in clinical development for ulcerative colitis and Crohn's disease that is only an IL-23 inhibitor.

V. ENTRY CONDITIONS

9. 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 be timely because the combination of drug development times and FDA approval requirements is 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

10. The effects of the Acquisition, if consummated, may be to substantially lessen competition and tend to create a monopoly in the relevant lines of commerce, 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 AbbVie and Allergan and reducing the number of independent significant competitors in the markets for prescription drugs to treat EPI, thereby increasing the likelihood that: (1) AbbVie would be able to unilaterally exercise market power in these markets; (2) the remaining competitors would engage in coordinated interaction between or among each other; and (3) customers would be forced to pay higher prices; and

    b. by eliminating future competition between AbbVie and Allergan in the development and sale of (1) IL-23 inhibitors to treat Crohn's disease and (2) IL-23 inhibitors to treat ulcerative colitis.

VII. VIOLATIONS CHARGED

11. The Acquisition described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

12. 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 fifth day of May, 2020 issues its Complaint against said Respondents.

By the Commission.

April J. Tabor
Acting Secretary

SEAL