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: **Elanco Animal Health, Incorporated,** **a corporation; and** **Bayer Aktiengesellschaft** **a corporation.**	Docket No. C-4725

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 Elanco Animal Health, Inc. ("Elanco"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the assets of Bayer Animal Health, GmbH, a division of Bayer AG ("Bayer"), 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 it charges as follows:

I. RESPONDENTS

1. Respondent Elanco is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana with its principal executive offices located at 2500 Innovation Way, Greenfield, Indiana 46140.

2. Respondent Bayer is a corporation organized, existing, and doing business under and by virtue of the laws of the Federal Republic of Germany with its principal executive offices located at Kaiser-Wilhelm-Allee 1, Leverkusen, Germany 51368. Bayer's United States address for service of process of the Complaint, the Decision and Order, and the Order to Maintain Assets solely in this matter is as follows: Bayer Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its executive offices and principal place of business at 100 Bayer Boulevard Whippany, NJ 07981.

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 TRANSACTION

4. Pursuant to a Share and Asset Purchase Agreement dated August 20, 2019, Respondent Elanco proposes to purchase all of the assets of Bayer Animal Health, GmbH, a division of Bayer, for approximately $7.6 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. A relevant line of commerce in which to analyze the effects of the Acquisition is the research, development, manufacture, and sale of low-dose prescription treatments for canine otitis externa. Canine otitis externa is an inflammation of the outer ear caused by bacteria and/or yeast. Bayer's prescription otitis externa treatment product, Claro, is a single-dose otic solution, while Elanco's product, Osurnia, is an otic gel given in two doses seven days apart. While older prescription products can be used to treat canine otitis externa, these products require numerous applications to the ear canal, up to twice daily for 14 consecutive days. Consequently, these older prescription products are not a reasonable substitute for the parties' low-dose prescription products for canine otitis externa.

6. A relevant line of commerce in which to analyze the effects of the Acquisition is the research, development, manufacture, and sale of fast-acting oral treatments that kill adult fleas on canines. Elanco's Capstar and Bayer's Advantus are tablets that start killing adult fleas quickly (within 30 minutes for Capstar, and within 60 minutes for Advantus) and eliminate all adult fleas within four hours. Medicated shampoos and sprays that can be used to kill adult fleas on canines are less convenient to administer and are slower-acting. Consequently, medicated shampoos and sprays are not a reasonable substitute for the parties' fast-acting oral treatments that kill adult fleas on canines.

7. A relevant line of commerce in which to analyze the effects of the Acquisition is the research, development, manufacture, and sale of brand name cattle pour-on insecticides. Cattle pour-on insecticides are liquid parasiticides administered directly to cattle's skin that kill and deter biting flies, lice and mites. Many customers trust and rely on brand name cattle pour-on insecticides rather than generic products. Consequently, generic cattle pour-on insecticides are not a reasonable substitute for the parties' brand name cattle pour-on insecticides.

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

IV. MARKET STRUCTURE

9. Bayer's Claro and Elanco's Osurnia are the only low-dose prescription products for the treatment of canine otitis externa. Consequently, the Acquisition would create a monopoly by combining the only two low-dose prescription products that treat canine otitis externa.

10. Elanco's Capstar and Bayer's Advantus are the only fast-acting oral treatments that kill adult fleas on canines. Consequently, the Acquisition would create a monopoly for fast-acting oral treatments that kill adult fleas on canines.

11. The market for brand name cattle pour-on insecticides is highly concentrated. Bayer, with its three brand name cattle pour-on insecticides products (Clean-Up II, Cylence, and Permectrin), is the market leader. The only other competitors with meaningful sales in the market are Merck & Co., Inc., which sells four products, and Elanco, which sells StandGuard. The Acquisition would allow the third largest competitor, Elanco, to acquire the market leader, greatly increasing concentration in brand name cattle pour-on insecticides.

V. ENTRY CONDITIONS

12. Entry into each relevant market described in Paragraphs 5 – 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 approval, where needed, and establish recognized brand names. 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 U.S. Food and Drug Administration and U.S. Environmental Protection Agency approval requirements, where needed, 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, by, among other things:

    a. combining the only two providers of low-dose prescription treatments for canine otitis externa, thereby eliminating actual, direct, and substantial competition between Bayer and Elanco;

    b. combining the only two providers of fast-acting oral treatments that kill adult fleas on canines, thereby eliminating actual, direct, and substantial competition between Bayer and Elanco;

    c. combining the market leader and one of the only two other providers of brand name cattle pour-on insecticides, thereby eliminating actual, direct, and substantial competition between Bayer and Elanco;

    d. increasing the likelihood that Elanco would unilaterally exercise market power in the relevant markets; and

    e. increasing the likelihood that customers would be forced to pay higher prices for the relevant products.

VII. VIOLATIONS CHARGED

14. The Acquisition 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 fourteenth day of July, 2020, issues its Complaint against said Respondents.

By the Commission, Commissioner Slaughter not participating.

April Tabor
Acting Secretary

SEAL: