United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

[Commenter's Name]
[Commenter's City, State]

Re: *AbbVie, Inc. and Allergan, plc*, FTC File No. 191 0169, C-4713

Dear Commenter:

Thank you for the comment that you submitted electronically in connection with the Consent Order issued by the Commission to settle antitrust concerns arising from AbbVie Inc.'s proposed acquisition of Allergan plc. The Commission reviewed the proposed acquisition to determine if the combination of AbbVie and Allergan was likely to substantially lessen competition in violation of Section 7 of the Clayton Act.

The Commission placed your comment on the public record and has given it careful consideration. To challenge a merger successfully under the Clayton Act, the Commission must have proof that the likely effect of the merger may be to substantially to lessen competition in a relevant market. The Commission cannot meet that burden of proof by surmising that the merger will cause harm, but must be able to present evidence demonstrating that this harm is likely.

Commission staff sought information from the merging parties and from third parties on a wide range of theories of competitive harm. The evidence gathered from both the parties and multiple industry participants, competitors, and other third parties did not provide a basis to believe that the merger, itself, would lead to competitive harms in any market beyond the ones that are remedied by the divestitures.

Consistent with the Horizontal Merger Guidelines, staff investigated whether the "merger will diminish innovation competition by combining two of a very small number of firms with the strongest capabilities to successfully innovate in a specific direction."[1] A wide array of evidence indicates that, besides the divestiture areas, there is no therapeutic area, disease, condition, or product where the parties are two of a limited number of competitors in a therapeutic area, or are the competitors with the strongest ability to innovate in a specific direction. The staff also investigated whether the merger eliminated competitive restraints on either AbbVie or Allergan that would allow for anticompetitive rebating practices that otherwise had failed due to the independence of the two companies, and did not find evidence to support such a theory.

Finally, the agency does not have the authority under Section 7 of the Clayton Act to extract remedies, including remedies related to pharmaceutical product pricing, patent practices by either company, or any past actions by the companies, which are unrelated to remedying the substantial lessening of competition caused by the proposed merger.

---

[1] Horizontal Merger Guidelines § 6.4.

The Commission is satisfied that the Order in this matter protects against the potential for anticompetitive harm as a result of AbbVie's acquisition of Allergan. In our view, based on a thorough and extensive investigation that considered all of the theories raised in comments submitted by the public, the relief contained in the Order appropriately addresses the competition concerns arising from the acquisition.

In its work on antirust and consumer protection issues, the Commission finds it helpful to hear from a variety of sources, and we appreciate your interest in this matter.

By direction of the Commission, Commissioner Chopra dissenting and Commissioner Slaughter not participating.

April Tabor
Acting Secretary