

competitiveness of the assets to be divested pending their divestiture. The Consent Agreement also contains a decision and order that is designed to remedy the anticompetitive effects of Baxter's proposed acquisition of the generic injectable pharmaceutical business of Wyeth. Under the terms of the Consent Agreement, the companies will be required to: (1) Divest all of Wyeth's assets relating to propofol to a Commission-approved acquirer; (2) terminate all of Baxter's rights and interests in GensiaSicor's pancuronium, vecuronium, and metoclopramide products, and divest all of its pancuronium, vecuronium, and metoclopramide assets to GensiaSicor; and (3) terminate Baxter's co-marketing agreement with Watson Pharmaceuticals, Inc. by March 14, 2004.

The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Consent Order.

Pursuant to an asset purchase agreement dated June 8, 2002, between Baxter and Wyeth, Baxter proposes to acquire from Wyeth substantially all of the assets related to Wyeth's generic injectable pharmaceutical business operated by Wyeth's ESI Lederle division for a total of \$316 million in cash and assumed liabilities. The Commission's complaint alleges that the proposed acquisition, 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 Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the markets for the manufacture and sale of: (1) Propofol; (2) pancuronium; (3) vecuronium; (4) metoclopramide; and (5) new injectable iron replacement therapies ("NIIRTs"). The proposed Consent Agreement would remedy the alleged violations by replacing in each of these markets the lost competition that would result from the merger.

Propofol

Propofol is a general anesthetic commonly used for the induction and maintenance of anesthesia during surgical procedures and as a sedative for patients who are mechanically ventilated. Although there are other anesthetic agents, there are many benefits associated with propofol

including the ability to quickly adjust the amount of sedation and its superior safety profile. Because propofol has a short duration profile, it is the preferred anesthetic agent for out-patient surgery. Annual U.S. sales of propofol total between \$375 and \$400 million.

The market for propofol is highly concentrated. AstraZeneca sells Diprivan®, the branded propofol product. Baxter markets the only generic propofol product, which is manufactured by GensiaSicor. Wyeth is seeking approval from the Food and Drug Administration ("FDA") for its own propofol product, and it is one of the two best-positioned firms to enter the market.

Entry into the propofol market requires lengthy development efforts because of the product's unique characteristics. Propofol is considered to be one of the most difficult injectable products to develop. Indeed, only one company has been able to introduce a generic propofol product. Propofol is manufactured using a complex process, and it requires the use of a preservative. The preserved formulation used for Diprivan® and the preserved formulation used for the generic propofol marketed by Baxter are both protected by patents. For this reason, any new entrant would have to develop a propofol product using a different preservative that does not infringe existing patents. Once a company has developed a viable product, it is also required to conduct studies and obtain approval from the FDA to market propofol. Clinical development and FDA approval for this particular generic drug takes several years.

The proposed acquisition would cause significant anticompetitive harm in the U.S. market for the manufacture and sale of propofol by eliminating potential competition between Baxter and Wyeth. With only two firms currently supplying propofol to customers in this market (Baxter and AstraZeneca), entry by Wyeth and the one other firm well-positioned to enter would likely increase competition and reduce propofol prices. Accordingly, allowing Baxter to acquire Wyeth's generic injectable business likely would reduce the number of rivals in the future from four to three and force customers to pay higher prices for propofol.

The proposed Consent Agreement preserves future competition in the market for propofol by requiring the parties to divest Wyeth's propofol assets to Faulding Pharmaceutical Company no later than 10 business days after the acquisition. Faulding is well-positioned to continue Wyeth's development efforts and poses no separate competitive

concerns as the acquirer of the propofol assets. If the Commission determines that Faulding is not an acceptable purchaser, or that the manner of divestiture is not acceptable, Baxter and Wyeth must divest the propofol assets to a Commission-approved buyer no later than 90 business days from the date the Order becomes final. Should they fail to do so, the Commission may appoint a trustee to divest the propofol assets. The Consent Agreement also requires the parties to license certain additional know-how that relates, but does not exclusively relate, to propofol to the propofol acquirer.

The Consent Agreement contains several provisions designed to ensure that the divestiture is successful. Baxter and Wyeth are required to provide transitional services to the propofol acquirer relating to regulatory approvals and manufacturing, and in responding to, and defending against, any lawsuit, investigation or proceeding relating to propofol. The Consent Agreement also requires Baxter and Wyeth to provide incentives to certain employees to continue in their positions until the divestiture is accomplished. For a period of six months from the date the assets are divested, Baxter and Wyeth will provide the propofol acquirer an opportunity to enter into employment contracts with individuals who have experience relating to Wyeth's propofol product. Baxter and Wyeth are also required to provide incentives to these individuals to accept employment with the propofol acquirer. For a period of one year following the divestiture date, Baxter and Wyeth are prohibited from hiring any employees of the acquirer of the propofol assets who have responsibility related to propofol. Finally, Baxter and Wyeth must take steps to maintain the confidentiality of confidential information related to propofol.

Pancuronium

Pancuronium is a rapid-onset, long-acting neuromuscular blocking agent used to temporarily freeze muscles during surgery or mechanical ventilation and to assist in the intubation process. Although pancuronium is an older drug, doctors continue to use it because it is an effective and inexpensive product with a known side-effect profile. The market for pancuronium in the United States is approximately \$2 million.

Pancuronium is a small and highly concentrated market. Baxter, Wyeth and Abbott are the only suppliers of generic injectable pancuronium in the United States. Currently, Baxter, which markets pancuronium pursuant to an exclusive