[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 111 0216]

Valeant Pharmaceuticals International, Inc.; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before January 12, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Valeant J&J, File No. 111 0216" on your comment, and file your comment online at https://ftcpublic.commentworks.com/ftc/valeantjohnsonconsent, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jacqueline K. Mendel (202-326-2603), FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 12, 2011), on the World Wide Web, at http://www.ftc.gov/os/actions.shtm. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 12, 2012. Write "Valeant J&J, File No. 111 0216" on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at http://www.ftc.gov/os/publiccomments.shtm. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any

sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at https://ftcpublic.commentworks.com/ftc/valeantjohnsonconsent by following the instructions on the web-based form. If this Notice appears at http://www.regulations.gov/#!home, you also may file a comment through that website.

If you file your comment on paper, write "Valeant J&J, File No. 111 0216" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW,

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at http://www.ftc.gov to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 12, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at http://www.ftc.gov/ftc/privacy.htm.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Valeant Pharmaceuticals International, Inc. ("Valeant"), which is designed to remedy the anticompetitive effects of Valeant's acquisition of the Ortho Dermatologics division of Janssen Pharmaceuticals, Inc. ("Janssen"), a wholly owned subsidiary of Johnson & Johnson.

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

Valeant intends to acquire Ortho Dermatologics from Janssen, a Johnson & Johnson company, in a transaction valued at approximately $345 million. Both parties sell topical

pharmaceuticals in the United States. The Commission's Complaint alleges that the proposed 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, in the market for tretinoin emollient cream. The proposed Consent Agreement remedies the loss of competition that would result from the merger in this market. Specifically, the Consent Agreement requires that Valeant return the marketing rights to two pharmaceutical products, Refissa, a branded tretinoin emollient cream, and a generic tretinoin emollient cream, to Spear Pharmaceuticals ("Spear"), the company that owns both products.

II. The Products and the Structure of the Market

Valeant's proposed acquisition of Ortho Dermatologics from Johnson & Johnson would create a monopoly in the market for tretinoin emollient cream. Tretinoin emollient cream is a topical retinoid cream used for the treatment of fine line wrinkles (retinoids are chemical compounds derived from Vitamin A, most commonly used in the treatment of acne, but also used to treat fine line wrinkles). This market includes branded and generic tretinoin emollient cream, and is highly concentrated. Pursuant to a co-marketing agreement between Valeant and Spear Pharmaceuticals, Valeant markets branded Refissa tretinoin emollient cream as well as a generic tretinoin emollient cream. Johnson & Johnson's Renova is the only other tretinoin emollient cream product on the market. The proposed acquisition would create a monopoly in the market for tretinoin emollient cream in the United States.

III. Entry

As with most pharmaceutical products, entry into the manufacture and sale of tretinoin emollient cream is difficult, expensive and time consuming. Developing and obtaining U.S. Food and Drug Administration ("FDA") approval for the manufacture and sale of topical

pharmaceuticals takes at least two years due to substantial regulatory, technological and intellectual property barriers. Moreover, entry is not likely because the relevant market is relatively small, providing limited sales opportunities relative to the cost of entry for any potential entrant.

IV. Effects of the Acquisition

The proposed acquisition would cause significant anticompetitive harm in the U.S. market for tretinoin emollient cream by eliminating actual, direct and substantial competition between Valeant and Johnson & Johnson. The evidence indicates that the loss of head to head competition between Renova and the products co-marketed by Valeant (Refissa and generic tretinoin emollient cream) would result in higher prices for tretinoin emollient cream.

V. The Consent Agreement

The proposed Consent Agreement would remedy the competitive concerns raised by the proposed acquisition by requiring that (1) Valeant terminate its agreement with Spear Pharmaceuticals, returning all its marketing rights to Refissa and generic tretinoin emollient cream and allowing Spear to take over its role in the market and (2) Valeant and Johnson & Johnson take steps to ensure that confidential business information relating to Refissa and generic tretinoin emollient cream will not be obtained or used by Valeant.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark
Secretary.

[FR Doc. 2011-32217 Filed 12/15/2011 at 8:45 am; Publication Date: 12/16/2011]