

enforcement when debt collectors go beyond the very limited inquiries allowed by today's action. I urge my fellow Commissioners and staff to couple today's action with strict monitoring of the industry going forward, to ensure its close adherence to the criteria set forth in the Policy Statement. If abuse becomes widespread, I would recommend withdrawal of the Policy Statement by the Commission.

The new Bureau of Consumer Financial Protection, created under the Dodd-Frank Wall Street Reform and Consumer Protection Act, will have an important role in this area as well. Dodd-Frank grants the new Bureau of Consumer Financial Protection the authority to promulgate regulations under the FDCPA, an authority that the Federal Trade Commission has not possessed. In the event that the Commission finds that the debt collection industry is not adequately adhering to the limited inquiries allowed under this Policy Statement, I hope my fellow Commissioners and staff will work closely with the new Bureau to further develop appropriate rules to be applied to the collection of the debts of decedents.

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## FEDERAL TRADE COMMISSION

[File No. 091 0136]

### Cardinal Health, 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 August 22, 2011.

**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 "Cardinal Health, File No. 091 0136" on your comment, and file your comment online at <https://ftcpbcommentworks.com/ftc/>

*cardinalhealthconsent*, 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:** William H. Efron (212-607-2827), FTC Northeast Region, 600 Pennsylvania Avenue, NW., Washington, DC 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 July 21, 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, DC 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 June 10, 2011. Write "Cardinal Health, File No. 091 0136" 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 Web site, 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 Web site.

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).<sup>1</sup> 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://ftcpbcommentworks.com/ftc/cardinalhealthconsent> 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 Web site.

If you file your comment on paper, write "Cardinal Health, File No. 091 0136" 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., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site 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

<sup>1</sup> 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).

before July 1, 2011. 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>.

### **I. Analysis of Agreement Containing Consent Order To Aid Public Comment**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Cardinal Health, Inc. ("Cardinal") to remedy the anticompetitive effects stemming from Cardinal's acquisition of Biotech's nuclear pharmacies in the Southwestern United States. Under the terms of the Consent Agreement, Cardinal is required to reconstitute and divest to one or more Commission-approved acquirers, Cardinal's former nuclear pharmacies in Las Vegas, Nevada, Albuquerque, New Mexico, and El Paso, Texas, and to take certain additional measures to restore competition in nuclear pharmacy markets in Las Vegas, Albuquerque, and El Paso.

On July 31, 2009, Cardinal acquired Biotech's nuclear pharmacies in Las Vegas, Albuquerque, and El Paso (the "Acquisition") pursuant to an Asset Purchase Agreement ("Agreement"). Prior to the Acquisition, both Cardinal and Biotech operated nuclear pharmacies in these cities. These nuclear pharmacies produced, distributed, and sold single photon emission computed tomography ("SPECT") radiopharmaceuticals (also referred to as "low energy radiopharmaceuticals") to hospitals and cardiology clinics. The Commission's complaint alleges that the Acquisition and the Agreement violated 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, because the Acquisition and Agreement may substantially lessen competition or tend to create a monopoly in the production, sale, and distribution of low energy radiopharmaceuticals in Las Vegas, Albuquerque, and El Paso and surrounding local areas.

The 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 review the Consent Agreement and comments received and decide whether to withdraw the proposed Consent Agreement, modify it, or make final the Consent Agreement's proposed Decision and Order ("Order").

### **II. Respondent Cardinal Health, Inc.**

Cardinal is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal executive offices at 7000 Cardinal Place, Dublin, Ohio 43017. Cardinal, a \$99 billion health care services company, is one of the leading suppliers of pharmaceuticals and medical products in the world. Cardinal is also a leading manufacturer of medical and surgical products, including gloves, surgical apparel, and fluid management products. In addition, Cardinal operates the nation's largest network of nuclear pharmacies.

### **III. The Products and Structure of the Markets**

Nuclear pharmacies provide radiopharmaceuticals to local hospitals and cardiology clinics, which use the products to diagnose and treat various diseases. Radiopharmaceuticals are drugs containing a radioactive isotope combined with a chemical compound. Due to the fact that the radioactive isotopes have short half-lives and decay rapidly, a nuclear pharmacy can only serve its local area. Accordingly, competition between nuclear pharmacies occurs at the local level.

The Commission's complaint alleges that the relevant product market in which to assess the effects of the Acquisition is the production, sale, and distribution of SPECT radiopharmaceuticals or low energy radiopharmaceuticals. The Commission's complaint further alleges that the relevant geographic markets in which to analyze the effects of the Acquisition are (i) Albuquerque, New Mexico and surrounding areas (the "Albuquerque market"); (ii) El Paso, Texas and surrounding areas (the "El Paso market"); and (iii) Las Vegas, Nevada and surrounding areas (the "Las Vegas market").

The Commission's complaint alleges that Cardinal and Biotech were the only two providers of low energy radiopharmaceuticals prior to the Acquisition in the Albuquerque market. As a result of the Acquisition, Cardinal holds a monopoly in the Albuquerque market. With respect to the El Paso market, the Commission's complaint alleges that Cardinal and Biotech were the only two providers of low energy pharmaceuticals prior to the Acquisition. As a result of the Acquisition, Cardinal held a monopoly in the El Paso market, until approximately November of 2010, when Rio Grande Nuclear Pharmacy, LLC opened in El Paso. Currently, Cardinal holds a large market share in the El Paso

market. Finally, regarding the Las Vegas market, the Complaint alleges that prior to the Acquisition, there were three providers of low energy radiopharmaceuticals in the market. Cardinal and Biotech were the two leading providers, followed by Advanced Isotopes of Las Vegas. As a result of the Acquisition, Cardinal obtained and has since held a large market share in the Las Vegas market.

### **IV. Effects of the Acquisition**

The Commission's complaint charges that the Acquisition may substantially lessen competition in the Las Vegas, Albuquerque, and El Paso markets for the production, sale, and distribution of low energy radiopharmaceuticals, by, among other things, (i) eliminating the direct and substantial competition between Cardinal and Biotech; (ii) reducing the number of significant competitors in each relevant market giving Cardinal substantial market power; (iii) facilitating the ability of Cardinal to unilaterally exercise market power; (iv) reducing Cardinal's incentives to improve service or product quality or pursue further innovation; (v) increasing the likelihood of coordinated interaction among the remaining competitors; and (vi) allowing Cardinal, unconstrained by effective competition, to increase prices.

### **V. Entry**

The Commission's complaint alleges that entry into the relevant markets would not be timely, likely, or sufficient to prevent or deter the likely anticompetitive effects of the Acquisition. The Commission's complaint further alleges that entrants face significant barriers in capturing sufficient business to replicate the scale and strength of either Cardinal or Biotech prior to the Acquisition.

### **VI. Terms of the Order**

The Consent Agreement is designed to remedy the likely anticompetitive effects of the Acquisition by restoring, to the extent possible, the lost competition between Cardinal and Biotech in Las Vegas, Albuquerque, and El Paso. Specific terms of the Order are discussed further below.

#### ***A. Reconstitution and Divestiture of the Former Cardinal Nuclear Pharmacies to One or More Commission-Approved Acquirers***

Prior to the Acquisition, both Cardinal and Biotech operated nuclear pharmacies in Las Vegas, El Paso, and Albuquerque. After the Acquisition, Cardinal relocated its nuclear pharmacy business in these cities to the former

Biotech nuclear pharmacy locations and closed its Cardinal facilities. The Order requires that within six months of the date on which the Order is accepted for public comment, Cardinal must reconstitute each of the three former Cardinal nuclear pharmacies and divest each of the pharmacies to a Commission-approved acquirer.

In connection with the divestiture of the three nuclear pharmacies, Cardinal is also required to divest to each acquirer the intellectual property related to the nuclear pharmacies owned by Biotech prior to the Acquisition. Cardinal must also obtain, maintain, and transfer to the acquirer(s) all regulatory approvals, licenses, qualifications, permits, or clearances that are necessary to operate a nuclear pharmacy. Finally, although, as stated above, the Commission must approve each acquirer, the Order specifically requires that Cardinal demonstrate that each acquirer has a supply of the two vital low energy radiopharmaceutical inputs, the radioisotope technetium 99 and a heart perfusion agent.

#### *B. Customer Rights To Terminate Contracts With Cardinal*

To ensure that the acquirer(s) have the opportunity to compete for sufficient business to obtain viable scale and restore competition, the Order requires that Cardinal grant each of its customers in Las Vegas, Albuquerque, and El Paso the right to terminate, without penalty or charge, its existing contract with Cardinal for the purchase of radiopharmaceuticals. Specifically, any customer that purchased radiopharmaceuticals from either Cardinal's or Biotech's nuclear pharmacy in Las Vegas, Albuquerque, or El Paso, at any time between July 1, 2009 (30 days prior to the Acquisition) and the relevant closing date (*i.e.*, the day on which Cardinal divests the reconstituted pharmacy in the customer's market), has the right to terminate its existing contract for radiopharmaceuticals with Cardinal. However, the Order does not grant customers the right to terminate radiopharmaceutical contracts with Cardinal that relate solely to the purchase of Positron Emission Tomography radiopharmaceuticals (also referred to as high energy radiopharmaceuticals).

Pursuant to the Order, Cardinal is required to notify each relevant customer within five days after the relevant closing date of the customer's right to terminate its existing contract. The Order further requires that Cardinal will terminate any relevant customer's existing contract within 30 days upon

receiving that customer's request to terminate. Relevant customers will have the option to terminate their existing contract with Cardinal for a period of 24 months from the relevant closing date.

#### *C. Facilitating the Acquirer's Employment of Certain Cardinal and Former Biotech Employees*

To provide the acquirer(s) with access to any necessary employees, the Order requires Cardinal to facilitate and not interfere with the recruitment of certain former Biotech employees and current Cardinal nuclear pharmacy employees in Las Vegas, Albuquerque, and El Paso. Such employees also are released from any restrictions on their ability to work for the acquirer(s).

#### *D. A Monitor Will Help Ensure Compliance*

The Order provides for the appointment by the Commission of an independent monitor with fiduciary responsibilities to the Commission, to help ensure that Cardinal carries out all of its responsibilities and obligations under the Order. The Order provides that Katherine L. Seifert, a person with significant experience in the radiopharmaceutical industry, shall serve as monitor. Ms. Seifert, currently of Seifert and Associates, Inc., provides consulting services for various clients in the radiopharmaceutical industry. In the event Cardinal fails to comply with its divestiture obligations, the Order also provides that the Commission may appoint a divestiture trustee to fulfill those requirements.

### **VII. Purpose of the Analysis To Aid Public Comment**

The purpose of this analysis is to facilitate public comment on the proposed Decision and Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement and Order.

By direction of the Commission, Commissioner Kovacic recused.

**Richard C. Donohue,**

*Acting Secretary.*

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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Office of the Secretary**

#### **Renewal of Declaration Regarding Emergency Use of Doxycycline Hyclate Tablets Accompanied by Emergency Use Information and Amendment To Include All Oral Formulations of Doxycycline**

**AGENCY:** Office of the Secretary (OS), HHS.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Homeland Security determined on September 23, 2008 that there is a significant potential for a domestic emergency involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, *Bacillus anthracis*. On the basis of this determination, the Secretary of Health and Human Services is renewing the October 1, 2008 declaration by former Secretary Michael O. Leavitt of an emergency justifying the authorization of emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued by the Commissioner of Food and Drugs under 21 U.S.C. 360bbb-3(a) and amending the declaration to include all oral formulations of doxycycline accompanied by emergency use information subject to the terms of any authorization issued by the Commissioner of Food and Drugs under 21 U.S.C. 360bbb-3(a). This notice is being issued in accordance with section 564(b)(4) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb-3(b)(4).

**DATES:** This Notice and referenced HHS declaration are effective as of July 20, 2011.

#### **FOR FURTHER INFORMATION CONTACT:**

Nicole Lurie, MD MSPH, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 205-2882 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:** On September 23, 2008, former Secretary of Homeland Security, Michael Chertoff, determined that there is a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, *Bacillus anthracis*—although there is no current