

ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of Cardinal Health, Inc., File No. 0910136

I. Introduction

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.