

have counsel present regarding such matters.

IX

It is further ordered that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in Respondent such as dissolution, assignment, sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted provisionally an agreement containing a proposed Consent Order from Glaxo plc ("Glaxo") under which Glaxo would be required to divest worldwide assets relating to the research and development, manufacture, distribution and sale of a therapeutic compound for the treatment of migraine headaches ("Wellcome's 311C90 Assets") to a Commission-approved purchaser.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

Pursuant to an offer announced on January 23, 1995, Glaxo, a British company, will acquire all of the capital stock of Wellcome plc ("Wellcome"), a British company.

The proposed 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 FTC Act, as amended, 15 U.S.C. 45, in the market for the research and development of non-injectable 5HT_{1D} agonists. 5HT_{1D} agonists are a specific class of drugs known to act on receptors in the human body that are responsible for migraine attacks.

The proposed consent order would remedy the alleged violation by replacing the lost competition that would result from the acquisition. Under the proposed Consent Order, Glaxo is required to provide technical assistance and advice to assist the purchaser of Wellcome's 311C90 Assets in obtaining FDA approval to manufacture and sell non-injectable 5HT_{1D} agonists. The proposed Order

also provides for a trustee to assure that Glaxo appropriately divests the Wellcome 311C90 Assets. If Glaxo fails to divest the Wellcome 311C90 Assets within nine months, then the trustee's authority may be extended to include responsibility to divest either Wellcome's 311C90 Assets or Glaxo's Sumatriptan Assets.¹ The potential that the trustee could ultimately divest Sumatriptan, a highly-valued product already on the market to treat migraine, ensures that Glaxo will exert all possible efforts to divest Wellcome's 311C90 Assets.

Under the provisions of the order, Glaxo is also required to provide to the Commission a report of compliance with the divestiture provisions of the order within sixty (60) days following the date this order becomes final, and every sixty (60) days thereafter until Glaxo has completely divested its interest in Wellcome's 311C90 Assets.

The proposed Consent Order will also prohibit Glaxo, for a period of ten (10) years, from acquiring more than a one percent interest in any entity involved in, or any assets used for, the clinical development or manufacture and sale of non-injectable 5HT_{1D} agonists either to be approved by or already approved by the Food and Drug Administration ("FDA") for the treatment of migraines.

One year from the date the Order becomes final and annually thereafter for nine (9) years, Glaxo will be required to provide to the Commission a report of its compliance with the Consent Order. The Consent Order also requires Glaxo to notify the Commission at least thirty (30) days prior to any change in the structure of Glaxo resulting in the emergence of a successor.

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

Donald S. Clark,

Secretary.

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La Asociacion Medica de Puerto Rico, et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

¹ Glaxo's Sumatriptan, marketed under the brand name Imitrex®, is currently on the market in the U.S. to treat patients with migraine attacks. It is available in the U.S. only in injectable form.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Medical Association, the Psychiatry Section, and the two doctors from encouraging, organizing or entering into: any boycott or refusal to deal with any third-party payer; or any agreement to refuse to provide services to patients covered by any third-party payer. In addition, the consent agreement would prohibit, for five years, the respondents from soliciting information from psychiatrists regarding their decisions whether to participate in agreements with insurers and provide service; from passing such information along to other doctors; and from giving psychiatrists advice about making those decisions.

DATES: Comments must be received on or before May 30, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Alan Loughnan or Alice Au, New York Regional Office, Federal Trade Commission, 150 William St., Suite 1300, New York, N.Y. 10038. (212) 264-1207.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following 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 sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of: La Asociació Médica de Puerto Rico, an unincorporated association, La Sección de Fisiatría de La Asociación Médica de Puerto Rico, an unincorporated association, Rafael L. Oms, M.D., individually and as an officer of La Sección de Fisiatría de la Asociación Médica de Puerto Rico, and Rafael E. Seín, M.D., individually and as an officer of La Sección de Fisiatría de la Asociación Médica de Puerto Rico.

The Federal Trade Commission having initiated an investigation of certain acts and practices of La Asociación Médica de Puerto Rico, ("La Asociación Médica") an unincorporated association; La Sección de Fisiatría de la Asociación Médica de Puerto Rico, ("La Sección de Fisiatría") an unincorporated association; Rafael L. Oms, M.D. ("Oms"), individually and as an officer of La Sección de Fisiatría de la Asociación Médica de Puerto Rico; and Rafael E. Seín, M.D. ("Seín"), individually and as an officer of La Médica de Fisiatría de la Asociación Médica de Puerto Rico (hereinafter sometimes referred to as "proposed respondents"); and it now appearing that the proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated, and providing for other relief:

It is hereby agreed by and between the proposed respondents, by their duly authorized officers and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondents La Asociación Médica and La Sección de Fisiatría are unincorporated associations organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with their offices and principal place of business at Ave. Fernández Juncos Num. 1305, Apartado 9387, Santurce, Puerto Rico, 00908.

Proposed respondents Dr. Oms and Dr. Seín are psychiatrists, licensed to practice medicine in the Commonwealth of Puerto Rico. Drs. Oms and Seín have at relevant times been officers of La Sección de Fisiatría. Dr. Oms' business address is Palmas Mail Station, Box 879, Suite 170, Humacao, Puerto Rico, 00792, and Dr. Seín's business address is 11746 Fernandez Juncos Station, San Juan, Puerto Rico 00910-1746.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

- (a) Any further procedural steps;
- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- (d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is

accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (1) Issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the draft of complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each

violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "La Asociación Médica" means La Asociación Médica de Puerto Rico, the Medical Association of Puerto Rico, its predecessors, sections, committees, subsidiaries, divisions, groups, and affiliates, and their respective directors, officers, employees, agents, consultants, and any other persons working for or on behalf of the foregoing, and their respective successors and assigns;

B. "La Sección de Fisiatría" means La Sección de Fisiatría de la Asociación Médica de Puerto Rico, the Physiatry Section of the Medical Association of Puerto Rico, its predecessors, sections, committees, subsidiaries, divisions, groups, and affiliates and their respective directors, officers, employees, agents, consultants, and any other persons working for or on behalf of the foregoing, and their respective successors and assigns;

C. "Rafael Oms" means Rafael L. Oms, M.D., his agents, and employees;

D. "Rafael Seín" means Rafael E. Seín, M.D., his agents, and employees;

E. "Third-party payer" means any person or entity that provides a program or plan pursuant to which such person or entity agrees to pay for treatment by physicians or therapists to individuals described in the plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, whether operated by a private or governmental entity; health maintenance organizations; preferred provider organizations; prescription service administrative organizations; health benefits programs for government employees, retirees, and dependents; administrators of self-insured health benefits programs; and employers or other entities providing self-insured health benefits programs; and

F. "Participation agreement" means any existing or proposed agreement, oral or written, in which a third-party payer agrees to reimburse a physician or therapist for the provision of medical, physical therapy, or other health-care services to Covered Persons, and the physician or therapist agrees to accept such payment from the third-party payer for such provision of medical, physical therapy, or other health-care

services during the term of the agreement.

II

It is further ordered that respondents, directly or indirectly, or through any corporate or other device, in or in connection with their activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, forthwith cease and desist from:

A. Entering into, threatening or attempting to enter into, organizing or attempting to organize, encouraging, continuing, cooperating in or carrying out any agreement, either express or implied, between or among any physiatrists, to boycott or refuse to deal with any third-party payer, or to withdraw from, threaten to withdraw from, refuse to enter into, or threaten to refuse to enter into any proposed or existing participation agreement;

B. Entering into, threatening or attempting to enter into, organizing or attempting to organize, encouraging, continuing, cooperating in or carrying out any agreement, either express or implied, between or among any physiatrists, to refuse to provide services to patients covered by any third-party payer in any proposed or existing participation agreement, or to threaten to refuse to provide services to such patients;

C. For a period of five (5) years after the date this order becomes final, continuing a formal or informal meeting of physiatrists after:

1. Any person makes any statement concerning one or more physiatrists' intentions or decisions with respect to

a. Entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement; or

b. Refusing or threatening to refuse to provide services to patients covered by any third-party payer in any existing or proposed participation agreement; and respondents La Asociación Médica and La Sección de Fisiatría fail to eject such person from the meeting; or

2. Two persons make statements prohibited in order Paragraphs II.C.1.a. or II.C.1.b.;

provided, however, that respondent Oms or Sein shall not be in violation of the order if, immediately following a violation of this paragraph of the order, he leaves a meeting continued in violation of this paragraph, and within thirty (30) days after such meeting, reports to the Commission the circumstances of such meeting, the

substance and source of the prohibited statements, and the respondents' actions in response thereto;

D. For a period of five (5) years after the date this order becomes final, providing advice to any physiatrist regarding

1. The desirability or appropriateness of participating in any existing or proposed participation agreement; or

2. Refusing or threatening to refuse to provide services to patients covered by any third-party payer in any existing or proposed participation agreement;

provided, however, that nothing contained in this Paragraph II.D. shall prohibit respondents from communicating purely factual information describing the terms and conditions of any participation agreement or operations of any third-party payer;

E. For a period of five (5) years after the date this order becomes final, communicating in any way to any physiatrist any information concerning any physiatrist's intentions or decisions with respect to

1. Entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement; or

2. Refusing or threatening to refuse to provide services to patients covered by any third-party payer in any existing or proposed participation agreement; or

F. For a period of five (5) years after the date this order becomes final, soliciting from any physiatrist any information concerning that physiatrist's or any other physiatrist's intentions or decisions with respect to

1. Entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement;

2. Refusing or threatening to refuse to provide services to patients covered by any third-party payer in any existing or proposed participation agreement.

Provided, however, that nothing in this order shall be construed to prevent respondents from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal, state, or commonwealth government executive agency or legislative body concerning legislation, rules, programs, or procedures, or to participate in any federal, state or commonwealth administrative or judicial proceeding;

Provided further that this order shall not be construed to prohibit any

respondent or any member of respondent associations from entering into an agreement or combination with any other physician or health care practitioner with whom the individual physician practices in partnership or in a professional corporation, or who is employed by the same person.

III

It is further ordered that this order shall not be construed to prohibit respondents Drs. Oms or Sein from communicating medical conditions or personal assessments of individual patients, where such communication neither nor is part of (1) an agreement, proposed agreement, or attempt to enter into an agreement among physiatrists to boycott or refuse to deal with any third-party payer, or (2) any other agreement, combination, or conspiracy the purpose, effect, or likely effect of which is to impede competition unreasonably.

IV

It is further ordered that:

A. La Sección de Fisiatría, within thirty (30) days after the date on which this order becomes final, distribute by first-class mail a copy of this order and the accompanying complaint to each of its current members, and to the last known address of any other person who was a member of La Sección de Fisiatría in 1990 or 1991;

B. La Asociación Médica, within thirty (30) days after the date on which this order becomes final, distribute by first-class mail a copy of this order and the accompanying complaint to each of its current members who is not also a member of La Sección de Fisiatría;

C. La Sección de Fisiatría, within thirty (30) days after the date on which this order becomes final, distribution by first-class mail a copy of this order and the accompanying complaint to each third-party payer with whom La Sección de Fisiatría has entered into negotiations concerning the provision of physiatry services;

D. La Asociación Médica, within sixty (60) days after the date on which this order becomes final, publish in Spanish this order and the accompanying complaint in an issue of *Prensa Médica* or in any successor publication, in the same type size normally used for articles that are published in *Prensa Médica* or successor publication;

E. La Sección de Fisiatría and La Asociación Médica, for a period of five (5) years after the date on which this order becomes final, provide each new member of La Sección de Fisiatría and new member of La Asociación Médica with a copy of this order at the time the member is accepted into membership of

La Sección de Fisiatría or La Asociación Médica;

F. La Sección de Fisiatría and La Asociación Médica each file a verified, written report with the Commission within ninety (90) days after the date on which this order becomes final, and annually thereafter for five (5) years on the anniversary of the date on which this order becomes final, and at such other times as the Commission may require, by written notice to La Sección de Fisiatría or La Asociación Médica, setting forth in detail the manner and form in which it has complied and is complying with this order;

G. La Sección de Fisiatría and La Asociación Médica for a period of five (5) years after the date on which this order becomes final, maintain and make available to Commission staff, for inspection and copying upon reasonable notice, records sufficient to describe in detail any action taken in connection with the activities covered by Parts II and IV of this order;

H. For a period of five (5) years after the date on which this order becomes final, La Sección de Fisiatría and La Asociación Médica notify the Commission at least thirty (30) days prior to any proposed change in La Sección de Fisiatría or La Asociación Médica, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, a change of name, a change of address, or any other change that may affect compliance obligations with this order.

It is further ordered that this order shall terminate on March 30, 2015.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from La Asociación Médica de Puerto Rico ("La Asociación Médica"), an unincorporated association; La Sección de Fisiatría de la Asociación Médica de Puerto Rico ("La Sección de Fisiatría"), an unincorporated association; Rafael L. Oms, M.D.; and Rafael E. Seín, M.D.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that La Asociación Médica, La Sección de Fisiatría, Dr. Oms, Dr. Seín, and others

have restrained competition among physiatrists by conspiring to engage in a concerted refusal to deal with La Administración de Compensaciones por Accidentes de Automóviles ("Administration for Compensation of Automobile Accidents" or "ACAA") or to treat ACAA Patients. ACAA is a third-party payer that provides health coverage to automobile accident victims in Puerto Rico. The complaint alleges that this conduct violates section 5 of the Federal Trade Commission Act.

The respondents have signed a consent agreement that prohibits them from engaging in unlawful concerted action. Paragraph A of Section II prohibits the respondents from entering into, threatening or attempting to enter into, organizing or attempting to organize, encouraging, continuing, cooperating, in, or carrying out any agreement with an insurer. Paragraph B is similar to Paragraph A, but prohibits refusals or threats to refuse to provide services to patients covered by any insurer. The complaint alleges that the physiatrists attempted to coerce ACAA through a concerted refusal to treat certain patients insured by ACAA.

Paragraphs C, D, E, and F of Section II are fencing-in paragraphs intended to prevent the respondents from engaging in actions that might in the future facilitate a concerted refusal to deal with an insurer of covered patients. The fencing-in provisions of Section II shall terminate five years after the date of issuance of the order. Paragraph C prohibits the respondents from continuing any meeting of physiatrists at which any person makes a statement about intentions or decisions with respect to entry into, withdrawal from, or refusal to provide services to patients in connection with any participation agreement, unless such person is ejected from the meeting by La Asociación Médica and La Sección de Fisiatría. Paragraph C also prohibits respondents from continuing any meeting at which two persons make such statements. Although Drs. Oms and Seín are not required to eject a person from a meeting, Drs. Oms and Seín are required to leave any meeting at which any person makes a statement about intentions or decision with respect to entry into, withdrawal from, or refusal to provide services to patients in connection with any participation agreements, unless such person is ejected from the meeting by La Asociación Médica and La Sección de Fisiatría; or at which two persons makes such statements. After Drs. Oms and Seín leave such a meeting, they are required to report to the Commission the circumstances of the meeting.

Paragraph D of Section II prohibits respondents from providing advice to any physiatrist on the desirability or appropriateness of participating in or refusing to provide services to patients covered by any insurer's program (but permits purely factual communications describing the terms of a participation agreement). Paragraph E prohibits respondents from communication to any physiatrist information concerning any other physiatrist's intention or decision with respect to entry into, withdrawal from, or refusal to provide services to patients covered by any participation agreement. Paragraph F prohibits respondents from soliciting information from any physiatrist concerning that person's or any other physiatrist's intention or decision with respect to entry into, withdrawal from, or refusal to provide services to patients covered by any participation agreement.

Section II contains a provision stating that the order does not impair respondents' First Amendment rights to petition the government. Section I also contains another proviso stating that the order does not prevent respondents or association members from forming physician partnerships or professional corporations.

Section III of the proposed order makes clear that the order does not prevent individual respondents Drs. Oms or Seín from communicating medical conditions or personal assessments of individual patients, where such communication neither constitutes nor is part of (1) an agreement among physiatrists to boycott or refuse to deal with any third-party payer, or (2) any other agreement, combination, or conspiracy the purpose, effect, or likely effect of which is to impede competition unreasonably.

Section IV of the proposed order contains standard notification and compliance provisions. These notification, reporting, and record keeping requirements apply only to La Asociación Médica and La Sección de Fisiatría.

Finally, Section V of the proposed order contains a twenty year "sunset" provision. Under this section, the terms of the order shall terminate twenty years after the date of issuance of the order.

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

Donald S. Clark,
Secretary.

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