

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of
American Home Products Corporation,
a corporation.

Docket No. C-3740

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Respondent, American Home Products Corporation ("AHP"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire the animal health business of Solvay S.A. ("Solvay"), a corporation subject to the jurisdiction of the Commission, in 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, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. DEFINITIONS

1. "Canine Lyme Vaccines" means all vaccines used to create and maintain antitoxin levels in dogs to prevent lyme disease.
2. "Canine Corona Virus Vaccines" means all combination vaccines used to create and maintain antitoxin levels in dogs to prevent corona virus, including the single antigens contained therein, individually, or in any combination.
3. "Feline Leukemia Vaccines" means all combination vaccines used to create and maintain antitoxin levels in cats to prevent feline leukemia, including the single antigens contained therein, individually, or in any combination.
4. "Respondent" means AHP.

II. RESPONDENT

5. Respondent AHP is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its principal place of business located at Five Giralda Farms, Madison, New Jersey 07940.
6. Respondent is engaged in, among other things, the research, development, manufacture and sale of Canine Lyme Vaccines, Canine Corona Virus Vaccines, and Feline Leukemia Vaccines.
7. Respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE ACQUIRED COMPANY

8. Solvay is a corporation organized, existing, and doing business under and by virtue of the laws of Belgium, with its principal place of business located at Rue du Prince Albert, 33, 1050 Brussels, Belgium.
9. Solvay is engaged in, among other things, the research, development, manufacture and sale of Canine Lyme Vaccines, Canine Corona Virus Vaccines, and Feline Leukemia Vaccines.
10. Solvay is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

IV. THE ACQUISITION

11. On October 31, 1996, AHP entered into a Purchase Agreement with Solvay to purchase Solvay's entire animal health business for approximately \$463 million ("Acquisition").

V. THE RELEVANT MARKETS

12. For purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:
 - a. the research, development, manufacture and sale of Canine Lyme Vaccines;

- b. the research, development, manufacture and sale of Canine Corona Virus Vaccines; and
 - c. the research, development, manufacture and sale of Feline Leukemia Vaccines.
13. For purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce.

VI. STRUCTURE OF THE MARKETS

14. The market for the research, development, manufacture and sale of Canine Lyme Vaccines is highly concentrated as measured by the Herfindahl-Hirschman Index ("HHI"). The post merger HHI is 8,042 points, which is an increase of 1,976 points over the premerger HHI level. AHP and Solvay are two of only three suppliers of Canine Lyme Vaccines in the United States.
15. AHP and Solvay are actual competitors in the relevant market for the research, development, manufacture and sale of Canine Lyme Vaccines in the United States.
16. The market for the research, development, manufacture and sale of Canine Corona Virus Vaccines is highly concentrated as measured by the HHI. The post merger HHI is 5,496 points, which is an increase of 809 points over the premerger HHI level. AHP and Solvay are two of only a small number of suppliers of Canine Corona Virus Vaccines in the United States. With the exception of Solvay, other suppliers of Canine Corona Virus Vaccines license from AHP the right to manufacture and sell their vaccines.
17. AHP and Solvay are actual competitors in the relevant market for the research, development, manufacture and sale of Canine Corona Virus Vaccines in the United States.
18. The market for the research, development, manufacture and sale of Feline Leukemia Vaccines is highly concentrated as measured by the HHI. The post merger HHI is 6,980 points, which is an increase of 3,353 over the premerger HHI level. AHP and Solvay are two of only three suppliers of Feline Leukemia Vaccines in the United States.
19. AHP and Solvay are actual competitors in the relevant market for the research, development, manufacture and sale of Feline Leukemia Vaccines in the United States.

VII. BARRIERS TO ENTRY

20. Entry into the research, development, manufacture and sale of Canine Lyme Vaccines and Canine Corona Virus Vaccines is difficult and time consuming, requiring the expenditure of significant resources over a period of many years with no assurance that a viable commercial product will result. The existence of broad patents governing the manufacture of such products compounds the difficulty of new entry.
21. Entry into the research, development, manufacture and sale of Feline Leukemia Vaccines is difficult and time consuming, requiring the expenditure of significant resources over many years with no assurance that a viable commercial product will result.
22. The need to obtain approvals by the United States Department of Agriculture to manufacture and sell animal vaccines in the United States further lengthens the time required to enter the relevant markets.

VIII. EFFECTS OF THE ACQUISITION

23. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in 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 following ways, among others:
 - a. by eliminating actual, direct, and substantial competition between AHP and Solvay in the relevant markets;
 - b. by increasing the likelihood that AHP will unilaterally exercise market power in the relevant markets; and
 - c. by increasing the likelihood of collusion or coordinated action among the remaining firms in the relevant markets.

IX. VIOLATIONS CHARGED

24. The Acquisition agreement described in Paragraph 11 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.
25. The Acquisition described in Paragraph 11, 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this sixteenth day of May, 1997, issues its Complaint against said respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: