

## IN THE MATTER OF

## IVAX CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF  
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT

*Docket C-3565. Consent Order, March 27, 1995--Modifying Order, June 17, 1996*

This order reopens a 1995 consent order -- that permitted the Florida-based corporation to acquire Zenith Laboratories and required the respondent, for ten years, to obtain Commission approval before acquiring stock -- and this order modifies the consent order by terminating the provision requiring Ivax to obtain prior Commission approval before acquiring any interest in any entity that manufactures, or is an exclusive distributor for another manufacturer of, extended release generic verapamil in the United States.

## ORDER REOPENING AND MODIFYING ORDER

On February 14, 1996, IVAX Corporation ("IVAX" or "respondent"), the respondent named in the consent order issued by the Commission on March 27, 1995, in Docket No. C-3565 ("order"), filed its Request To Reopen and Modify Consent Order ("Request") in this matter. IVAX asks that the Commission reopen and modify the order pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval And Prior Notice Provisions, issued on June 21, 1995 ("Prior Approval Policy Statement" or "Statement").<sup>1</sup> IVAX's Request asks that the Commission "reopen the order issued on March 27, 1995, in this proceeding and modify the order by deleting paragraph III." Request at 1. The thirty-day public comment period on IVAX's Request ended on March 25, 1996. No comments were received. For the reasons discussed below, the Commission has determined to grant IVAX's Request.

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act,

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<sup>1</sup> 60 Fed. Reg. 39745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.

commonly referred to as the Hart-Scott-Rodino ("HSR") Act, 15 U.S.C. 18a, to protect the public interest in effective merger law enforcement. Prior Approval Policy Statement at 2. The Commission announced that it will "henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger." As a general matter, "Commission orders in such cases will not include prior approval or prior notification requirements." *Id.*

The Commission stated that it will continue to fashion remedies as needed in the public interest, including ordering narrow prior approval or prior notification requirements in certain limited circumstances. The Commission said in its Prior Approval Policy Statement that "a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger." The Commission also said that "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger." *Id.* at 3. As explained in the Prior Approval Policy Statement, the need for a prior notification requirement will depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors.

The Commission also announced, in its Prior Approval Policy Statement, its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited respondents subject to such requirements "to submit a request to reopen the order." *Id.* at 4. The Commission determined that, "when a petition is filed to reopen and modify an order pursuant to . . . [the Prior Approval Policy Statement], the Commission will apply a rebuttable presumption that the public interest requires reopening of the order and modification of the prior approval requirement consistent with the policy announced" in the Statement. *Id.*

The complaint in this case charged that IVAX's proposed acquisition of all of the voting securities of Zenith Laboratories, Inc. ("Zenith"), if consummated, would constitute a violation of Section

5 of the FTC Act and Section 7 of the Clayton Act by substantially lessening competition and tending to create a monopoly in the relevant market. Complaint paragraphs 16, 18-19. The complaint alleged the sale of generic verapamil as the relevant product market and alleged the United States as the relevant geographic market. Complaint paragraphs 11-12.

The complaint alleged that the acquisition would eliminate direct and actual competition between IVAX and Zenith; increase the likelihood that IVAX will unilaterally exercise market power; and increase the likelihood that generic verapamil customers will be forced to pay higher prices and/or endure having reduced amounts of generic verapamil available for purchase. Complaint paragraph 16.

The presumption is that setting aside the general prior approval requirement in this order is in the public interest. No facts have been presented that overcome this presumption, and nothing in the record suggests that IVAX would engage in the same acquisition as alleged in the complaint. Accordingly, the Commission has determined to reopen the proceedings and modify the order by deleting paragraph III which contains the prior approval provision.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened; and that the Commission's order issued on March 27, 1995, be, and it hereby is, modified by deleting paragraph III, as of the effective date of this order.

Modifying Order

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IN THE MATTER OF

## ALLEGHANY CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF  
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT*Docket C-3218. Consent Order, Sept. 9, 1987--Modifying Order, June 27, 1996*

This order reopens a 1987 consent order -- that permitted the New York-based title insurance company to acquire Safeco Title Insurance Co., and required the respondent, for ten years, to obtain Commission approval before acquiring certain title-insurance related assets -- and this order modifies the consent order by terminating the provision requiring notification of acquisitions of copies of title records, but will retain the requirement for acquisitions of original title records.

## ORDER REOPENING AND MODIFYING ORDER

On November 15, 1995, Alleghany Corporation ("Alleghany" or "respondent"), the respondent named in the consent order issued by the Commission on September 8, 1987, in Docket No. C-3218 ("1987 order") and in the consent order issued by the Commission on July 11, 1991, in Docket No. C-3335 ("1991 order"), filed its Petition To Reopen and Modify Orders ("Petition") in these matters. Alleghany asks that the Commission reopen and modify the 1987 and 1991 orders pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval And Prior Notice Provisions, issued on June 21, 1995 ("Prior Approval Policy Statement" or "Statement").<sup>1</sup> Alleghany's Petition requests that the Commission reopen and modify the orders to remove paragraph V of the 1987 and 1991 orders, which currently requires Alleghany to seek the prior approval of the Commission for certain acquisitions. In addition, Alleghany requests that the Commission set aside or modify the prior notice provisions of paragraph VI of the 1987 and 1991 orders. Alleghany's Petition was placed on the public record for thirty days. No comments were

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<sup>1</sup> 60 Fed. Reg. 39745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.