

25 May 2020

PUBLIC VERSION
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To:
NZ Commerce Commission
Anthony Stewart and Richard May

SUBJECT:
Submission in response to the Elanco-Bayer statement of issues from the NZCC.
ISBN 978-1-869458-14-0

Introduction:

On the statement of issues dated 7 May 2020 related to the acquisition of Bayer AG's animal health business (**Bayer**) by Elanco Animal Health Inc. (**Elanco**) (**Proposed Acquisition**), the New Zealand Commerce Commission (**NZCC**) communicated it was testing whether the Proposed Acquisition would substantially lessen competition due to unilateral effects for manufacture/importation and wholesale supply of products in certain markets. The markets that Zoetis is addressing in this letter are in relation to the products:

- a) for the treatment of otitis in dogs;
- b) for the treatment of external parasites on sheep; and
- c) for the prevention of external parasites on sheep.

Treatments for otitis in dogs:

On the 24th of April, it was made public that Elanco has entered into an agreement with Dechra Pharmaceuticals PLC pursuant to which Elanco's Canine Otitis Product Osumnia will be divested to Dechra. Should this agreement be completed, we think the concerns raised by the NZCC in relation to the otitis treatment market would be addressed.

Products for the treatment and prevention of external parasites on sheep:

We believe the concerns of the NZCC as set out in its statement of issues are legitimate. Without any divestment, the merged company would have about two thirds of the current sheep ectoparasite market. While the market is expected to remain stable, the market share of the merged entity is likely to increase, based on the current market trend of increase in sales over the last 5 year for the Insect Development Inhibitors (e.g. Dicyclanil) and Spinosyn (Spinosad) along with the rapid decrease in sales of the insect growth regulators (due to their decreased efficacy as single actives against resistant flies).

Treatment of external parasites:

Best practice recommendations for the control of external parasites is to use a different chemical to treat infected animals from that which is used to prevent infections. Therefore, splitting the products available on the market based on this criterion is valid.

There are very few products available for killing fly larvae. The acquisition of Bayer by Elanco would give Elanco the vast majority of these products within the following families: Organophosphates (e.g. Serophos and Maggo), Spinosyn (Cyrex) and Neonicotinoid (Zapp Encore). The only exception to this would be the Synthetic pyrethroid's which do not have as good a knockdown on fly larvae as many of the others and resistance is more likely to be present to this family as it has been on the market for many years.

Prevention of external parasite infections:

The majority of the products available in the market are for the prevention of external parasite infections. Farmers do not want to have to treat infected animals on both welfare and production grounds. Resistance is a major issue in this area with both fly and lice having developed some degree of resistance to most of the older single active products. This means farmers are having to rely more heavily on the newer families (Spinovyn and Insect development inhibitors) or the combination products.

The acquisition of Bayer by Elanco would give Elanco the majority of these newer products while the other large companies have either older single active products or combination products derived from the older product families. This is the same situation in Australia, making it unlikely that a possible geo-extension of existing registrations from Australia to New Zealand after approval of the ACVM, would bring any further relevant competition.

Another factor that may lessen competition among products for the treatment and prevention of external parasites on sheep:

Product development:

There are very few markets in the world where sheep is a major species with associated significant animal health market value like New Zealand. In addition to that, the fly market is also a high-risk market due to the speed with which resistance can develop and spread.

This means that important R&D investments with a possible successful outcome bringing real innovation, have only a few markets where a return on investment is likely. There is also a high probability, due to building resistance, that manufacturers would have less time to recoup their investment, which by de facto would limit participation and competition in the prevention and treatment of parasites for sheep. The purchase of Bayer by Elanco will reinforce this.

With regards to the smaller local developers & suppliers, the majority have a generic Cyromazine, and they have a very limited range of products. They are very unlikely to bring R&D investment and innovation in this field to strengthen competition in any significant way, as these companies generally rely on generic copies of the major manufacturers.

Conclusion on sheep ectoparasite products:

In conclusion and regardless of market definition, Elanco and Bayer are currently each other's closest competitors when it comes to the supply of products for external parasites on sheep. This competition would be lost as a result of the proposed acquisition and the considerations from both the NZCC, and Elanco themselves to divest Maggo and Zapp Encore, are sound and legitimate.

Kind regards,



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