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Dear Interested Party

Proposed merger between Schering-Plough Corporation and Merck and Co. Inc – effect on animal health markets

The Australian Competition and Consumer Commission (ACCC) has been advised of the proposed merger of Schering-Plough Corporation (**Schering-Plough**) with Merck and Co. Inc (**Merck**) (the **proposed merger**). Schering-Plough and Merck are involved in research and development, manufacturing and marketing of human and animal health products.

The ACCC is currently considering the proposed merger under section 50 of the *Trade Practices Act 1974* (**the Act**). Section 50 of the Act prohibits mergers and acquisitions that substantially lessen competition in a market, or are likely to do so.

The ACCC invites your comment on the competitive effects of the proposed merger, specifically relating to animal health products.

The ACCC is also seeking submissions on the competitive effects of the merger as they relate to human health products. To make a submission in relation to human health products, please contact Ms Sheridan Burnett on (02) 6243 1296.

The ACCC will also be conducting a review of Pfizer Inc's (**Pfizer**) proposed acquisition of Wyeth Corp (**Wyeth**). The ACCC has received a partial submission from Pfizer and will wait to receive a full submission before commencing its review of the proposed acquisition. The ACCC will also be seeking submissions on the competitive effects of Pfizer's proposed acquisition of Wyeth.

Background

Schering-Plough is a global research and development company that produces prescription pharmaceuticals, animal health and consumer health products. In Australia, Schering-Plough operates its animal health activities under the names Intervet Schering-Plough Animal Health (**Intervet**) and Coopers Animal Health (**Coopers**). Schering-Plough generally offers small animal health products through its brand Intervet. Schering-Plough also provides livestock and large animal health products, generally through its brand Coopers.

Merck is a global research pharmaceutical company that discovers, develops, manufactures and markets a broad range of health products. In Australia, Merck operates animal health activities through Merial Australia Pty Ltd (**Merial**) and Ancare Australia Pty Ltd (**Ancare**). Merial is a joint venture arrangement between Merck and pharmaceutical company Sanofi-

Aventis. The operations of Merial are divided into two business units: production animal and companion animal.

In relation to animal health, Merck and Schering-Plough both supply products in the following broad treatment areas:

- Companion animal treatments (including anti-inflammatory, anti-microbial, parasiticides and cardiovascular products)
- Ectoparasiticides (internal parasiticides) for ruminants
- Endoparasiticides (external parasiticides) for ruminants
- Endectocides (combined internal and external parasiticides) for ruminants
- Endoparasiticides for horses.

Request for submissions

The ACCC is conducting market inquiries to assist with its review of the proposed merger and would welcome any comments that you have in relation to the competitive effects of the proposed merger, specifically in relation to animal health products. The specific issues on which we would appreciate your response are outlined in **Attachment A**. We recognise that you may not be able to comment on all of the issues raised but any assistance that you could provide would be greatly appreciated.

If the information provided is of a confidential nature, you can be assured that the details provided by you will be treated confidentially. That is, the ACCC will not disclose the confidential information to the merger parties or other third parties, other than advisors or consultants engaged directly by the ACCC, without first providing you with notice of its intention to do so, such as where it is compelled to do so by law. Please note that any information provided which you believe to be of a confidential nature should be clearly marked or identified as confidential.

We would be grateful for your response as soon as possible and in any event no later than **9 June 2009**.

Responses may either be mailed to Ms Sheridan Burnett at the above address, faxed to (02) 6243 1212 or emailed (preferably in PDF format) to mergers@acc.gov.au with the title: *Submission re: proposed merger of Merck and Co. Inc and Schering-Plough Corporation.*

If you have any queries in relation to this letter or would prefer to discuss your response over the telephone, please contact Ms Burnett on (02) 6243 1296 or Ms Susannah Bolton on (02) 6243 1055.

Yours sincerely



Danielle Staltari
Director
Merger Investigations Branch

Attachment A – Animal Health Products

General Questions

1. Please describe your business or your area of speciality, including any relationship you have with Merck, Merial, Ancare, Schering-Plough, Intervet or Coopers (the **merger parties**).
2. Who do you consider to be the merger parties closest competitors for the supply of the following treatments:
 - a. Ectoparasiticides for cattle (tick control)
 - b. Ectoparasiticides for sheep (fly and lice control)
 - c. Endoparasiticides for horses
 - d. Endoparasiticides for sheep (worm control)
 - e. Endoparasiticides / endectocides for cattle (worm control)
 - f. Anti-inflammatories for companion animals
 - g. Anti-microbials for companion animals
 - h. Parasiticides for companion animals (worm control)
 - i. Cardiovascular products for companion animals.

Please explain the reasons for your view (for example, with references to companies that supply treatments which have similar action or effect, which are especially innovative in a particular treatment area or offer customers additional benefits/services).

3. Do you specialise in any of the treatment areas listed in question 2? If yes, please indicate which treatment areas and whether you would be willing to discuss your area of speciality in more detail with staff of the ACCC?
4. Do you consider that Merck (through Merial or Ancare) or Schering-Plough (through Intervet or Coopers) is a vigorous competitor in any market? For instance, is Merck or Schering-Plough known as an innovator in a particular treatment area?
5. To what extent do you consider that the merger parties compete, either with each other or in the market more generally, on the basis of:
 - a. Price of product and service (e.g. do the parties offer discounts on products and/or provide support services to veterinarians or wholesalers)
 - b. Product quality and range
 - c. Research and innovation
 - d. Other non-price factors such as service, marketing and training.
6. To what extent do you consider customers (e.g. wholesale suppliers and veterinarians) are able to exercise countervailing power and bargaining power when agreeing on price and terms of sale for animal health products with the merger parties? How will countervailing power be affected by the proposed merger?
7. Are there any regulatory requirements which currently constrain the merger parties' ability or incentive to compete?

8. Post merger, to what extent do you consider the merged firm would be able to increase the price of animal health products? What products do you consider the merged firm could increase the price on? What constraints would exist to prevent this occurring?
9. What effect do you think the proposed merger will have on support services provided to users and/or customers (i.e. veterinarians, consumers) for animal health products supplied by the merged firm? For example, will the proposed merger be likely to increase, decrease or have no effect on the type and level of support services offered?
10. What effect do you think the proposed merger will have on the research and development activities for animal health products of the merged firm? For example, will the proposed merger be likely to increase, decrease or have no effect on the level of research and development?
11. Do you consider the proposed merger is likely to result in a substantial lessening of competition? Why/why not?
12. Please provide any other information that you believe the ACCC should consider as part of its assessment of the proposed merger.

Questions for animal health manufacturers

13. Please describe your business, including the products that you manufacture and the key treatment areas in which you are involved in research and development.
14. What would be required for a new animal health manufacturer to produce animal health products (including both over-the-counter (OTC) and vet only medicines)? In particular:
 - a. What steps must a new entrant take to set up business?
 - b. What regulatory requirements would need to be satisfied?
 - c. How long would it take to seek the necessary regulatory approvals?
 - d. What costs would be involved in establishing manufacturing facilities and which of these costs would be 'sunk costs'?
 - e. Are there any other barriers that would prevent or deter entry (e.g intellectual property on products, existing supply arrangements etc)?

How do these requirements differ for a new animal health manufacturer looking to produce animal health products that are off-patent?

15. Are you aware of any new entrants in the animal health industry in Australia in the last five years? If so, please provide details.
16. Could you expand your existing animal health product range, in particular into those treatment areas listed in question 2? Why/why not? What would be required for you to expand your product range (e.g how would you expand your product range, what type of costs would be involved, how long would it take)?
17. Do you hold licences from other companies to manufacture animal health products? In particular, please outline:

- a. Which company you obtained the licence from and for which products?
 - b. The terms of the licence arrangement?
 - c. Whether the licence arrangement is exclusive?
 - d. How and when the license arrangements were negotiated?
18. Do you import any animal health products or inputs used to make these products? In particular, please outline:
- a. Which products you import and why?
 - b. What barriers exist to importing animal health products or inputs used to make these products (e.g regulatory barriers, transport costs or product and safety standards)?
 - c. Whether you think imports provide, or have the potential to provide, a competitive constraint on the quality, service and price of locally manufactured animal health products in Australia?
19. Do you have any contract manufacturing arrangements? If yes, please explain for which products and with whom the arrangement are with.
20. What promotional activities, information, seminars, consumer support or other services do animal health manufacturers provide in addition to their products? Please explain the benefit of any additional services provided by manufacturers and why these services are provided.

Questions for wholesalers/distributors/buying groups

21. Please provide an overview of your wholesale/distribution business in Australia. In particular:
- a. From which manufacturers do you obtain animal health products?
 - b. What animal health products do you supply?
 - c. To whom do you distribute / supply animal health products?
22. Do you receive any discounts on animal health products supplied by the merger parties? If yes, please describe the type of discount, in what circumstances the discount is provided, to which product(s) the discount applies and why the discount is provided?
23. Do the merger parties provide any support services to wholesalers/distributors or buying groups? If yes, please describe the type of services provided.
24. Do you currently manufacture any animal health products in-house? Have you sponsored a manufacturer to produce any animal health products? Why/why not?
25. Do you import any animal health products or inputs used to make these products? If yes, please answer the questions outlined at question 18.
26. Are you aware of any wholesalers/distributors or buying groups who have entered into animal health product manufacturing in the past 5 years, either directly or by sponsoring a new entrant?

27. Post merger, to what extent do you consider the merged firm would be able to increase the price of animal health products or decrease the level of service provided to wholesalers/distributors/buying groups? What products do you consider the merger firm could increase the price on? What factors exist to prevent this occurring?
28. Post merger, if the merged firm was able to increase the price of its animal health products or decrease the level of service provided to you as a customer, would you be able to switch to another supplier? Why/why not? What would be involved in switching suppliers (e.g what type of costs would be involved, how long would it take to switch suppliers)?