

regulation? Are some types of regulations more friendly to e-commerce?

Do businesses try to limit competition over the Internet through anticompetitive efforts, and if so how? What are the business justifications for these efforts?

## 2. Issues for Particular Industries

### Retailing

How and why do manufacturers limit their distributors' sales of certain products over the Internet? What are the costs to consumers? Do distributors pressure manufacturers into limiting sales over the Internet, and if so how? Are such efforts facilitated by horizontal agreements? Does such conduct raise antitrust concerns, and are there legitimate business justifications, such as concerns about free-riding, for limiting e-commerce sales?

### Automobiles

Have manufacturers been forced to limit Internet sales of automobiles, and if so how? What are the costs to consumers? Are there legitimate concerns about free-riding or differentials in bargaining power? Are there different issues concerning the sale of new and used cars? What regulations have been applied to the sale of new or used cars through online auction sites? Does state regulation have the effect of protecting dealers from competition, to the possible detriment of consumers, or does existing state regulation provide important protection to consumers?

### Cyber-Charter Schools

How have states fostered or hindered cyber-charter schools? What are the competitive benefits of cyber-schools? Are there legitimate consumer protection concerns? Do the efforts of some school districts to limit cyber-charter schools raise any antitrust issues? What is the current status and focus of litigation, and what types of legislative solutions are possible?

### Real Estate/Mortgages

What types of state regulations limit online real estate and mortgage services? What are the costs to consumers? What is the impact of regulations requiring real estate closings or refinancing to be conducted solely by attorneys? What are the pro-consumer rationales for such

regulations, and are there less restrictive means of achieving the same goals? What is the impact of Internet competition upon real estate commissions, and how are realtors responding to that competition?

### Health Care/Pharmaceuticals/Telemedicine

What types of state regulations limit online provision of health care goods and services, such as pharmaceuticals and telemedicine? What are the costs to consumers? Are these regulations directed mainly at out-of-state competitors? Are online prescriptions particularly susceptible to abuse? What are the pro-consumer rationales for regulations, and are there less restrictive means of achieving the same goals? Are reciprocity statutes an effective way to dealing with these issues?

### Wine Sales

How does the "three tier" system for distributing wine limit online sales, and are there legitimate justifications, such as temperance or taxation, for the system? What are the costs to consumers? Are there separate and measurable price and variety effects? Are there less restrictive means for achieving the same goals, and are reciprocity statutes a viable alternative? What is the status of the ongoing litigation addressing this system?

### Auctions

How have states applied their existing auctioneer regulations to online auction sites? What are the costs to consumers? Have states enacted new regulations targeted at online auctions? Do such regulations limit competition from online auctions, and if so how? Do those regulations impact large and small online auctioneers differently? To what extent are online auctions replacing traditional retail outlets, for consumers goods, automobiles (new or used), and other products? What types of state regulation can best protect consumers while still allowing competition from online auctions?

### Contact Lenses

What types of state regulations limit online sales of contact lenses? What are the costs to consumers? What are the health justifications for such regulations, and how valid are they? Are there separate issues for replacement

lenses or disposable lenses? How should prescription requirements be administered? Have manufacturers limited the supply of contact lenses to online vendors, and if so why?

### Funerals (Caskets)

What types of state regulations limit online casket sales? What are the costs to consumers? What are the pro-consumer rationales for such regulations, particularly in light of the recent controversies? Are there less restrictive means of achieving the same goals? What is the status and focus of current litigation?

The Commission welcomes suggestions for other questions that also should be addressed. Proposed questions, identified as such, may be sent by electronic mail to [competition@ftc.gov](mailto:competition@ftc.gov).

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
<b>Transactions Granted Early Termination—06/24/2002</b>			
20020795 .....	Kaman Corporation .....	Dae Y. Shin .....	DSE Inc.
20020868 .....	Holding Eurocard, S.A. ....	MasterCard Incorporated .....	MasterCard Incorporated.

Trans #	Acquiring	Acquired	Entities
20020872 .....	CSFB Global Opportunities Partners, L.P.	Oxford Automotive, Inc .....	Oxford Automotive, Inc.
20020876 .....	Daniel K. Thome .....	GS Industries (Debtor-In-Possession).	Georgetown Steel Corporation.
20020880 .....	WorldCom, Inc .....	Star Telecommunications, Inc .....	PT-1 Communications, Inc. PT-1 Long Distance, Inc. PT-1 Technologies, Inc.
20020882 .....	The PMI Group, Inc .....	Fairbanks Capital Holding Corp ..	Fairbanks Capital Holding Corp.
20020883 .....	AT&T Broadband Corp .....	GSA Commerce, Inc .....	GSA Commerce, Inc.
20020884 .....	GTCR Fund VII, L.P .....	Alex E. Gores .....	VeriFone, Inc.

**Transactions Granted Early Termination—06/25/2002**

20020873 .....	MedPoint Inc .....	MedPoint Inc .....	Wallace Pharmaceuticals/ASTA Medica L.L.C.
20020879 .....	Cooperatieve Centrale Raiffeisen—Boerenleenbank B.A.	General Mills, Inc .....	General Mills, Inc. GM Cereals Operations, Inc.

**Transactions Granted Early Termination—06/26/2002**

20020888 .....	Alcatel .....	Telera, Inc .....	Telera, Inc.
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**Transactions Granted Early Termination—06/28/2002**

20020838 .....	DRS Technologies, Inc .....	Eaton Corporation .....	Eaton Corporation.
20020853 .....	Striker Corporation .....	Tyco International Ltd .....	Surgical Dynamics Canada, Inc. Surgical Dynamics Germany GmbH. Surgical Dynamics Inc.
20020858 .....	South African Breweries plc .....	Philip Morris Companies, Inc .....	Miller Brewing Company.
20020869 .....	GS Capital Partners 2000, L.P ....	Atlantic Equity Partners International II, L.P.	BPC Holding Corporation.
20020893 .....	Group 1 Automotive, Inc. ....	Miller Trust of 1980 (restated) ....	Miller Automotive Group Inc.
20020898 .....	Electronic Data System Corporation.	Loudcloud, Inc .....	Loudcloud, Inc.
20020902 .....	CompuCredit Corporation .....	Federated Department Stores Inc	Fingerhut Receivables, Inc.
20020905 .....	Novell, Inc .....	SilverStream Software, Inc .....	SilverStream Software, Inc.

**Transactions Granted Early Termination—07/01/2002**

20020863 .....	Aquila, Inc .....	George T. Lewis, Jr. and Betty G. Lewis.	Cogentrix Energy, Inc.
20020871 .....	ABM Industries Incorporated .....	Michael Sweig .....	Lakeside Building Maintenance, Inc.
20020877 .....	Carl C. Icahn .....	Tyco International Ltd .....	Tyco International Ltd.
20020896 .....	Gray Communication Systems, Inc.	Stations Holding Company, Inc ...	Stations Holding Company, Inc.

**Transactions Granted Early Termination—07/02/2002**

20020900 .....	Thomas J. Petters .....	Federated Department Stores, Inc.	Fingerhut Companies, Inc.
20020901 .....	Theodore Deikel .....	Federated Department Stores, Inc.	Fingerhut Companies, Inc.

**Transactions Granted Early Termination—07/03/2002**

20020906 .....	Cemex, S.A. de C.V .....	Puerto Rican Cement Company, Inc.	Puerto Rican Cement Company, Inc.
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**Transactions Granted Early Termination—07/04/2002**

20020892 .....	Warburg Pincus Private Equity VIII, L.P.	Agere Systems, Inc .....	Agere Systems, Inc.
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**Transactions Granted Early Termination—07/05/2002**

20020899 .....	Proxim Corporation .....	Agere Systems, Inc. ....	Agere Systems, Inc.
20020907 .....	EDO Corporation .....	Behrman Capital II, L.P .....	CEI Systems, Inc. Condor Systems, Inc.

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay, Contact Representative, Federal Trade Commission, Premeger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580. (202) 326-3100.

By Direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

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## FEDERAL TRADE COMMISSION

[File No. 021 0059]

### **Amgen Inc. and Immunex Corporation; Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before August 12, 2002.

**ADDRESSES:** Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov), as prescribed below.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Jex, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-3273.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned 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 thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for

July 12, 2002), on the World Wide Web, at "<http://www.ftc.gov/os/2002/07/index.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov). Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

### **Analysis of Agreement Containing Consent Order To Aid Public Comment**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed Consent Order from Amgen Inc. ("Amgen") and Immunex Corporation ("Immunex") that is designed to remedy the anticompetitive effects of the merger of Amgen and Immunex. Under the terms of the agreement, the companies would be required to: (1) Divest of all Immunex's assets relating to Leukine (a neutrophil regeneration factor) to Schering AG ("Schering"); (2) license certain Amgen patents relating to its tumor necrosis factor ("TNF") receptor to Serono S.A. ("Serono"); and (3) license certain Amgen and Immunex patents relating to the development of Interleukin-1 ("IL-1") receptors to Regeneron Pharmaceuticals Inc. ("Regeneron").

The proposed Consent Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Consent Order.

In their merger agreement of December 16, 2001, Amgen and

Immunex propose to combine their two companies in a transaction valued at approximately \$16 billion. Thereafter, the merged entity will be called Amgen Inc. The proposed Complaint alleges that the proposed merger, 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 markets for: (1) Neutrophil regeneration factors; (2) TNF inhibitors; and (3) IL-1 inhibitors. The proposed Consent Order would remedy the alleged violations by replacing the lost competition in each of these markets that would result from the merger.

### *Neutrophil Regeneration Factors*

Neutrophil regeneration factors are used to treat neutropenia, the suppression of production of certain white blood cells (known as "neutrophils") which often results from chemotherapy. Immunex's product, Leukine, stimulates the production of both granulocytes and macrophages, two types of neutrophils, while Amgen's products, Neupogen and Neulasta, stimulate the production of granulocytes. The use of these products to stimulate neutrophil regeneration allows patients to maintain a robust immune system while continuing with their chemotherapy regimens. Annual U.S. sales of neutrophil regeneration factors total approximately \$1.2 billion.

The market for neutrophil regeneration factors is highly concentrated. Amgen and Immunex are the only companies with neutrophil regeneration factors approved for sale in the United States. Amgen's Neupogen is the leading product in this market, with 2001 sales of approximately \$1.05 billion in the United States. In January 2002, Amgen launched Neulasta, an extended-release version of Neupogen. Immunex's 2001 sales for Leukine were \$109 million.

Entry into the neutrophil regeneration factor market requires lengthy preclinical and clinical trials, data collection and analysis, and expenditures of significant resources over many years to qualify manufacturing facilities with the Food and Drug Administration ("FDA"). Clinical development and FDA approval can extend from 6 to 10 years and cost over \$200 million. The FDA must approve all phases of development, including extensive preclinical and clinical work. The most significant barriers to entry include technical, regulatory, patent, clinical and production barriers. No company can reach advanced stages of development