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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Thomas B. Leary
Pamela Jones Harbor
Jon Leibowitz

In the Matter of	)	
JOHNSON & JOHNSON,	)	**Docket No. C-4154**
a corporation.	)	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Johnson & Johnson ("J&J"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Guidant Corporation ("Guidant"), 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 ("FTC 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. "Commission" means the Federal Trade Commission.

2. "J&J" or "Respondent" means Johnson & Johnson, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Johnson & Johnson, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

3. "Guidant" means Guidant Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions,

groups and affiliates controlled by Guidant Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

4. "Drug Eluting Stent" or "DES" means a stent that elutes or otherwise delivers one or more drugs or pharmaceutical compositions for the treatment of coronary artery disease.

5. "Endoscopic Vessel Harvesting Device" or "EVH Device" means a medical device consisting of various components to allow for the minimally-invasive removal of the saphenous vein, the radial artery, or other conduit for use in coronary artery bypass graft surgery, from a patient's body with the use of endoscopic technology and equipment.

6. "FDA" means the United States Food and Drug Administration.

7. "Proximal Anastomotic Assist Device" or "Proximal AAD" means a medical device used to create a bloodless field, without clamping the aorta, to assist in the creation of a proximal anastomosis as part of a coronary artery bypass graft surgery.

8. "Rapid Exchange," "Rapid Exchange delivery system" or "RX" means intralumenal catheters and stent and embolic protection delivery systems having a guidewire lumen with a proximal guidewire port located substantially remote from the proximal end of the catheter shaft.

II. RESPONDENT

9. Respondent J&J is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New Jersey, with its office and principal place of business located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. J&J, among other things, is engaged in the research, development, marketing and sale of interventional cardiology products, including Drug Eluting Stents, and cardiac surgery devices, including Endoscopic Vessel Harvesting Devices and Proximal Anastomotic Assist Devices.

10. J&J 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. ACQUIRED COMPANY

11. Guidant is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 111 Monument Circle, Indianapolis, Indiana 46204. Guidant, among other things, is engaged in the research, development, marketing, and sale of interventional cardiology products, including

the research and development of Drug Eluting Stents, and cardiac surgery devices, including Endoscopic Vessel Harvesting Devices and Proximal Anastomotic Assist Devices.

12. Guidant 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. PROPOSED ACQUISITION

13. On December 15, 2004, J&J and Guidant entered into an agreement and plan of merger (the "Purchase Agreement") whereby J&J agreed to acquire Guidant in a transaction valued at approximately $25.4 billion (the "Acquisition").

V. RELEVANT MARKET

14. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the research, development, manufacture, and/or sale of the following products:

a. Drug Eluting Stents;

b. Endoscopic Vessel Harvesting Devices; and

c. Proximal Anastomotic Assist Devices.

15. For the 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

16. J&J is one of only two companies (the other is Boston Scientific Corporation) currently selling DESs in the United States. At least three other companies, including Guidant, are involved in the research and development of DESs and are poised to receive FDA approval to sell DESs in the United States in the next two to three years.

17. There are only three companies free to offer Rapid Exchange versions of their DESs: J&J, Guidant and Boston Scientific. No other company has licenses or access to the Rapid Exchange patents. Currently, over 70 percent of the DES devices sold in the United States employ the Rapid Exchange delivery system, and the percentage of DES devices sold on Rapid Exchange delivery systems in the United States is expected to continue to increase rapidly.

18. Until recently, J&J and Guidant were the sole competitors in the market for EVH Devices. Although another company, Terumo Corporation, received FDA approval for its device in January of 2005, J&J and Guidant still dominate the market for these devices, and together account for almost 100 percent of sales in the U.S. market for EVH Devices.

19. The U.S. market for Proximal AADs is also highly concentrated as measured by the Herfindahl-Hirschman Index ("HHI"). J&J and Guidant are two of only three companies that compete in the market for Proximal AADs. Guidant is the market leader in this market, and together with J&J, accounts for over 95 percent of unit sales of Proximal AADs in the U.S. market.

VII. ENTRY CONDITIONS

20. Developing a Drug Eluting Stent, Endoscopic Vessel Harvesting Device, or Proximal Anastomotic Assist Device, working around and/or acquiring licenses to critical intellectual property related to those devices, obtaining FDA approval for those devices, and marketing those devices, takes significantly longer than two years. Therefore, entry into the relevant lines of commerce described in Paragraph 14 would not be timely, likely, or sufficient in magnitude, character and scope to deter or counteract the anti-competitive effects of the Acquisition.

VIII. EFFECTS OF THE ACQUISITION

21. The effects of the Acquisition, if consummated, may be to substantially 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. eliminating potential competition between two of only three suppliers of Drug Eluting Stents with access to a Rapid Exchange delivery system;

b. eliminating actual, direct and substantial competition between J&J and Guidant in the markets for the research, development, marketing, and sale of Endoscopic Vessel Harvesting Devices and Proximal Anastomotic Assist Devices;

c. increasing the ability of the merged entity to unilaterally raise prices in the relevant markets; and

d. reducing research and development in the relevant markets.

IX. VIOLATIONS CHARGED

22. The Purchase Agreement described in Paragraph 13 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

23. The Acquisition described in Paragraph 13, 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 twenty-first day of December, 2005, issues its Complaint against said Respondent.

By the Commission, Chairman Majoras and Commissioner Harbour recused.

Donald S. Clark
Secretary

SEAL: