ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of Getinge AB and Datascope Corp., File No. 091 0000

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Getinge AB ("Getinge") and Datascope Corp. ("Datascope"). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise result from Getinge's acquisition of Datascope. Under the terms of the proposed Consent Agreement, Datascope is required to divest to a third party its endoscopic vessel harvesting ("EVH") product line.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to an Agreement and Plan of Merger dated September 15, 2008, Getinge proposes to acquire all of the outstanding shares of Datascope common stock in a transaction valued at approximately $865 million. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the U.S. market for EVH devices. The proposed Consent Agreement would remedy the alleged violations by replacing the competition that would be lost in this market as a result of the acquisition.

II. The Parties

Getinge is a leading global provider of equipment and systems in the healthcare and life sciences fields. Getinge is divided into three business segments: Medical Systems, Extended Care, and Infection Control. The Medical Systems segment manufactures and sells, among other things, surgical tables and lights. In January 2008, Getinge acquired the Cardiac and Vascular divisions of Boston Scientific Corporation, including Guidant's EVH business, which Boston Scientific had purchased in 2006. The Boston Scientific divisions have been integrated into the Medical Systems segment of Getinge, and the products are now sold under the Maquet brand. In 2007, Getinge generated global sales of $2.2 billion.

Datascope is the world's leading supplier of intra-aortic balloon pump counter pulsation devices, and is a diversified medical device company that develops, manufactures and sells proprietary products for clinical health care markets in interventional cardiology, cardiovascular and vascular surgery, and critical care. Datascope acquired the EVH devices at issue in this case

from Ethicon, a Johnson & Johnson company, in January 2006. Datascope's global sales for fiscal year 2008 were $230.9 million, and its U.S. sales were $98.8 million. Datascopic's EVH device is part of its Cardiac Assist business unit, which accounted for $189.3 million of Datascope's worldwide sales.

III. Endoscopic Vessel Harvesting Devices

The EVH device market is the relevant product market in which to analyze the competitive effects of the proposed acquisition. EVH devices are used in coronary artery bypass graft ("CABG") surgery, most often to remove the saphenous vein from the patient's leg, or sometimes the radial artery from the arm, for use as a conduit to bypass one or more blocked coronary arteries. Because it is a minimally-invasive procedure, EVH provides several benefits over the other two vessel harvesting methods (open and bridging) both of which are more invasive, cause more pain and scarring, and carry a greater risk of infection. As a result, neither of the other methods is considered a viable economic alternative for EVH devices. EVH devices, therefore, constitute a separate product market.

The United States is the relevant geographic market in which to analyze the effects of the proposed acquisition on the EVH device market. EVH devices are subject to regulation and cannot be marketed or sold in the United States without prior approval from the U.S. Food and Drug Administration ("FDA"). Receiving FDA approval to market an EVH device in the United States can be a lengthy process. EVH devices sold outside of the United States but not approved by the FDA for sale in the United States therefore do not provide viable competitive alternatives for U.S. consumers.

The U.S. market for EVH devices is highly concentrated, and together, the combined firm would account for approximately 90 percent of this market. Firms seeking to enter the market for EVH devices face regulatory hurdles and significant intellectual property barriers, both of which make entry into the market for EVH devices in the next two to three years highly unlikely. In addition, while the use of EVH devices in CABG surgery is increasing, the number of CABG procedures and related vessel harvesting procedures performed in the United States has been declining as minimally-invasive stenting procedures have increased. As a result, it is unlikely that firms would find it profitable to enter the EVH device market in response to a modest increase in the price of the devices.

The proposed acquisition would result in a duopoly in the market for EVH devices and is likely to lead to increased prices and decreased innovation for those devices.

IV. The Consent Agreement

The proposed Consent Agreement effectively remedies the proposed acquisition's anticompetitive effects in the U.S. market for EVH devices by requiring Datascope to divest its EVH product line to a Commission-approved buyer at no minimum price. Datascope has reached an agreement to divest the EVH business to Sorin Group USA, Inc. Sorin, a diversified medical device company, has a line of cardiovascular products, including artificial cardiac

valves and coronary stents. Pursuant to the Consent Agreement, Datascope is required to accomplish the divestiture of its EVH product line no later than ten days after the acquisition is consummated.

The divestiture will allow Sorin to enter and compete in the EVH market. The assets to be divested include all third party contracts to supply the components of the EVH product line. In addition, the Consent Agreement requires Getinge to grant the Commission-approved buyer a covenant not to sue for infringement of any EVH-related patents that Getinge or Datascope held at the time of the acquisition. The Consent Agreement also permits Datascope to provide certain transitional services to the Commission-approved buyer of the EVH product line assets. These services may be necessary to ensure a smooth transition of the product line to the acquirer and continued and uninterrupted service to customers during the transition. The purchaser will have a secure supply of the EVH product line because third parties supply the components of the EVH product line. Further, Sorin currently is capable of assembling the components and marketing the finished products.

V. Appointment of an Interim Monitor and a Divestiture Trustee

The proposed Consent Agreement includes a provision that allows the Commission to appoint an interim monitor to oversee Datascope's compliance with all of its obligations and performance of its responsibilities pursuant to the Commission's Decision and Order. If appointed, the interim monitor would be required to file periodic reports with the Commission to ensure that the Commission remains informed about the status of the divestitures, the efforts being made to accomplish the divestiture, and the provision of services and assistance during the transition period.

Finally, the proposed Consent Agreement contains provisions that allow the Commission to appoint a divestiture trustee if any or all of the above remedies are not accomplished within the time frames required by the Consent Agreement. The divestiture trustee may be appointed to accomplish any and all of the remedies required by the proposed Consent Agreement that have not yet been fulfilled upon expiration of the time period allotted for each.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.