

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill
 Maureen K. Ohlhausen

In the Matter of

JOHNSON & JOHNSON,
a corporation.

Docket No. C-4363

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 Synthes, Inc. (“Synthes”), 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 J&J” 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. “Synthes” means Synthes, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions,

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

4. “Volar distal radius plating system” means a plating system used to treat fractures of the distal portion of the radius bone that is implanted from the bottom of the wrist.

5. “DVR” means the DVR Anatomic Volar Plating System, the volar distal radius plating system owned by Respondent J&J.

6. “FDA” means the United States Food and Drug Administration.

II. RESPONDENT

7. 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 trauma products, including the DVR.

8. Respondent 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. PROPOSED ACQUISITION

9. On April 26, 2011, J&J and Synthes entered into an agreement and plan of merger (the “Purchase Agreement”) whereby J&J agreed to acquire Synthes in a transaction valued at approximately \$21.3 billion (the “Acquisition”).

IV. RELEVANT MARKET

10. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the research, development, manufacture, and sale of volar distal radius plating systems.

11. 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 line of commerce. To compete effectively in the United States volar distal radius plating market, a firm must have

FDA approval for its device, establish a local sales and service organization, and its product must not infringe any other firm's intellectual property.

V. STRUCTURE OF THE MARKET

12. Combined, J&J and Synthes would control over 70 percent of the U.S. market for volar distal radius plating systems. Synthes is the leading supplier of volar distal radius plating systems, accounting for approximately 42 percent of the market by 2010 revenue. J&J's volar distal radius plating system accounted for approximately 29 percent of the market by 2010 revenue. Although other companies sell volar distal radius plating systems in the United States, most achieve only minimal sales. The U.S. market for volar distal radius plating systems is highly concentrated as measured by the Herfindahl-Hirschman Index ("HHI"). If left unremedied, the acquisition would produce a post-merger HHI of over 5,000 and would represent an increase in the HHI of more than 2,500.

VI. CONDITIONS OF ENTRY AND EXPANSION

13. A supplier attempting to enter the market for volar distal radius plating systems would have to invent around the patents held by J&J and Synthes, develop a reputation for quality products and support among surgeons, and establish a strong distribution network. Both the J&J and Synthes volar distal radius plating systems are protected by patents. The patents held by the two companies have largely prevented competitors from developing products that surgeons consider to be as effective as those of J&J and Synthes. Manufacturer product reputation and distribution presence also play a strong role in surgeon preferences. Many fringe competitors are limited by their lack of a strong distribution presence, and it would take a significant amount of time for one or more current fringe competitors to develop a reputation for quality, service, and consistency that rivals that of J&J and Synthes with respect to volar distal radius plating. Therefore, entry into the relevant line of commerce described in Paragraph 10 or expansion by fringe competitors would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition.

VII. EFFECTS OF THE ACQUISITION

14. The effects of the Acquisition, if consummated, would be substantially to lessen competition and to tend to create a monopoly in the relevant market 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 actual, direct, and substantial competition between J&J and Synthes in the market for the research, development, marketing, and sale of volar distal radius plating systems;

- and
- b. increasing J&J's ability to raise prices unilaterally in the relevant market;
 - c. reducing research and development in the relevant market.

VIII. VIOLATIONS CHARGED

15. The Purchase Agreement described in Paragraph 9 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

16. The Acquisition described in Paragraph 9, 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 eleventh day of June, 2012, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: