

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

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright
 Terrell McSweeney

In the Matter of)	
)	
)	
ZIMMER HOLDINGS, INC.,)	
a corporation;)	
)	
LVB ACQUISITION, INC.,)	Docket No. C-
a corporation;)	
and)	
)	
)	
BIOMET, INC.,)	
a corporation.)	
)	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Zimmer Holdings, Inc. (“Zimmer”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent LVB Acquisition, Inc. (“LVB”) and its subsidiary, Respondent Biomet, Inc. (“Biomet”), corporations subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, that such acquisition, if consummated, would violate 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, 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. RESPONDENTS

1. Respondent Zimmer is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters located at 345 East Main Street, Warsaw, Indiana 46580.

2. Respondent LVB is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

3. Respondent Biomet is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its headquarters located at 56 East Bell Drive, Warsaw, Indiana 46582.

4. Each 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 company whose business is in or affects commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

5. Pursuant to an Agreement and Plan of Merger (“Agreement”) dated April 24, 2014, Zimmer proposes to acquire all of the voting securities of LVB, the parent company of Biomet, for approximately \$13.35 billion (the “Acquisition”). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKETS

6. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the development, license, manufacture, marketing, distribution, and sale of (a) unicondylar knee implants, (b) total elbow implants, and (c) bone cement.

- a. Unicondylar knee implants are medical devices implanted into a patient’s knee to replace damaged bone and cartilage, typically due to advanced osteoarthritis in one compartment of the knee.
- b. Total elbow implants are medical devices that replace the elbow joint with a metal hinge affixed to stems implanted in the humerus and ulna. Total elbow implants are used to treat advanced osteoarthritis or severe trauma.
- c. Bone cement is used in joint arthroplasties to affix reconstructive joint implants to bone.

7. For the purposes of this Complaint, the United States is the relevant geographic area in which to assess the competitive effects of the Acquisition in each of the relevant lines of commerce.

IV. THE STRUCTURE OF THE MARKETS

8. Biomet and Zimmer are two of only three substantial competitors in the market for unicondylar knee implants. Biomet has a market share of at least 44%. Zimmer's market share is at least 23%. Stryker Corporation ("Stryker"), the next largest competitor, has a market share of approximately 8%. Although other firms participate in this market, their market shares are considerably smaller. The Acquisition would reduce the number of significant suppliers of unicondylar knee implants from three to two and would create a merged entity having a market share of at least 67%.

9. As a result of the Acquisition, the market for total elbow implants would become highly concentrated. There are currently only three main suppliers of total elbow implants: Zimmer, Biomet, and Tornier N.V. ("Tornier"). Zimmer and Biomet are the two largest market participants, as well as each other's closest competitors. Tornier is the only other significant competitor. The rest of the market is comprised of fringe players that have much smaller market shares.

10. Zimmer and Biomet are two of only four significant competitors in the market for bone cement. Zimmer has a market share of approximately 30% and Biomet has a market share of approximately 10%. Stryker, the market leader in bone cement, and the DePuy Synthes Companies of Johnson & Johnson are the only other significant competitors. The Acquisition would substantially increase concentration in the bone cement market and reduce the number of major suppliers from four to three.

V. ENTRY CONDITIONS

11. Entry into the relevant markets described in Paragraphs 6 and 7 would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. De novo entry into each of these relevant markets would not take place in a timely manner because the product development process combined with the U.S. Food and Drug Administration approval requirements would be lengthy. A potential entrant into the relevant markets would also need to develop a reputation for quality and establish a sales network to provide surgeons with high-quality technical support. An additional barrier to de novo entry into the bone cement market is that, in order to make a significant market impact, a potential entrant must have an established portfolio of orthopedic implants to drive sales of its bone cement. No other entry is likely to occur in the relevant markets such that it would be timely and sufficient to deter or counteract the competitive harm likely to occur from the Acquisition.

VI. EFFECTS OF THE ACQUISITION

12. 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, by eliminating actual, direct, and substantial competition between Respondents Zimmer and Biomet and reducing the number of competitors for the sale of each relevant product, thereby:

- a. increasing the likelihood that Respondent Zimmer would unilaterally exercise market power in these markets;
- b. increasing the likelihood that consumers would experience lower levels of quality and service for each relevant product; and
- c. increasing the likelihood that customers would be forced to pay higher prices for each relevant product.

VII. VIOLATIONS CHARGED

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

14. The Acquisition described in Paragraph 5, 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 _____ day of _____, 2015 issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: