

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

In the Matter of)	
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)	
BECTON, DICKINSON AND COMPANY)	Docket No. C-4637
a corporation)	
)	
and)	
)	
C. R. BARD, 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 Becton, Dickinson and Company (“BD”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the issued and outstanding shares of Respondent C. R. Bard, Inc. (“Bard”) by means of a merger, 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, 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 BD is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its headquarters located at 1 Becton Drive, Franklin Lakes, New Jersey, 07417.
2. Respondent Bard is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its headquarters located at 730 Central Avenue, Murray Hill, New Jersey 07974.
3. 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

4. Pursuant to an Agreement and Plan of Merger, dated as of April 23, 2017, BD and Lambda Corp., a wholly-owned subsidiary of BD, proposed to acquire the issued and outstanding shares of Bard by means of a merger in exchange for cash and stock valued at approximately \$24 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

5. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the development, manufacture, marketing, distribution, and sale of tunneled home drainage catheter systems and soft tissue core needle biopsy devices.

- a. Tunneled home drainage catheter systems treat recurrent fluid buildup in the lungs or the abdomen of patients suffering from certain diseases, such as cancer. These systems drain fluid from the lungs (pleural drainage) or abdomen (peritoneal drainage) through a tunneled, indwelling catheter connected to a disposable receptacle. Once a medical doctor places the indwelling catheter into a patient, fluid drainage can take place in a patient’s home or in a hospice setting.
- b. Soft tissue core needle biopsy devices are used by medical clinicians, typically interventional radiologists or oncologists, to remove small samples of tissue from soft tissue organs for examination and diagnosis. Soft tissue core needle biopsy devices do not include, and are distinguished from, vacuum-assisted biopsy devices which are used only for breast biopsies and employ a vacuum to remove larger tissue samples.

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

IV. STRUCTURE OF THE MARKET

7. Respondents BD and Bard are the two largest manufacturers of tunneled home drainage catheter systems in the United States. BD and Bard have the number one and number two market share positions, respectively. Post-merger, the Respondents would have a combined

market share of approximately 98% in the United States. Two other firms comprise the small balance of the relevant market. The Acquisition would substantially increase concentration in the already highly concentrated U.S. market for tunneled home drainage catheter systems.

8. Respondents BD and Bard are the two largest manufacturers of soft tissue core needle biopsy devices in the United States. Bard and BD have the number one and number two market share positions, respectively. Post-merger, the Respondents would have a combined market share of approximately 60% or greater in the United States. Other firms in this market have considerably smaller shares than the Respondents combined. The Acquisition would substantially increase concentration in the already highly concentrated U.S. market for soft tissue core needle biopsy devices.

V. EFFECTS OF THE ACQUISITION

9. The Acquisition, if consummated, may substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45, by eliminating actual, direct, and substantial competition between BD and Bard in the markets for tunneled home drainage catheter systems and soft tissue core needle biopsy devices. The Acquisition, if consummated, would increase the likelihood that (1) a combined BD and Bard would be able to unilaterally exercise market power, (2) customers would be forced to pay higher prices, and (3) customers would experience lower levels of innovation for each relevant product.

VI. ENTRY CONDITIONS

10. Entry into the relevant markets described in Paragraphs 5 and 6 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 would be costly and not take place in a timely manner because of the time required for product development, U.S. Food and Drug Administration approval, establishment of a sales and marketing infrastructure, and market adoption. No entry is likely to occur that would deter or counteract the competitive harm likely to result from the Acquisition.

VII. VIOLATIONS CHARGED

11. The Agreement and Plan of Merger described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

12. The Acquisition described in Paragraph 4, 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, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-second day of December 2017, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: