

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

**COMMISSIONERS:**       **Joseph J. Simons, Chairman**  
                                  **Noah Joshua Phillips**  
                                  **Rohit Chopra**  
                                  **Rebecca Kelly Slaughter**  
                                  **Christine S. Wilson**

**In the Matter of**

**BOSTON SCIENTIFIC CORPORATION,  
a corporation.**

**Docket No. C-4684**

**ORDER TO MAINTAIN ASSETS**

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition by Respondent Boston Scientific Corporation (“BSC”) of the voting securities of BTG plc (“BTG”). The Commission’s Bureau of Competition prepared and furnished to Respondent the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondent with violations of 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.

Respondent and the Bureau of Competition executed an agreement (“Agreement Containing Consent Orders” or “Consent Agreement”), containing (1) an admission by Respondent of all the jurisdictional facts set forth in the Draft Complaint; (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the Draft Complaint or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true; (3) waivers and other provisions as required by the Commission’s Rules; and (4) a proposed Decision and Order and this Order to Maintain Assets.

The Commission having thereafter considered the matter and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments in conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, now in conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission makes the following jurisdictional findings and issues the following Order to Maintain Assets:

1. Respondent BSC is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its executive offices and principal place of business located at 300 Boston Scientific Way, Marlborough, Massachusetts 01752.
2. The Commission has jurisdiction over the subject matter of this proceeding and of Respondent, and this proceeding is in the public interest.

### **I. Definitions**

**IT IS ORDERED** that, as used in this Order to Maintain Assets, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

- A. “Asset Maintenance Period” means the period commencing on the date the Commission issues this Order to Maintain Assets and ending when the Decision and Order becomes final.
- B. “Assets To Be Maintained” means the Divestiture Product Assets, Divestiture Product Businesses, and BSC Manufacturing Equipment.
- C. “Decision and Order” means:
  1. The proposed Decision and Order contained in the Consent Agreement in this matter until issuance of a final Decision and Order by the Commission; and
  2. The Final Decision and Order issued by the Commission in this matter, following the issuance of a final Decision and Order by the Commission.

### **II. Asset Maintenance**

**IT IS FURTHER ORDERED** that during the Asset Maintenance Period, Respondent shall operate the Assets To Be Maintained in the ordinary course of business consistent with past practices, and shall:

- A. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Assets To Be Maintained, to minimize any risk of loss of competitive potential of the Assets To Be Maintained, to operate the Assets To Be Maintained in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Assets To Be Maintained, except for ordinary wear and tear. Respondent shall not sell, transfer,

encumber, terminate the operations of, or otherwise impair the Assets To Be Maintained (other than in the manner prescribed in the Decision and Order or this Order to Maintain Assets), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Assets To Be Maintained; and

- B. Conduct or cause to be conducted the Assets To Be Maintained in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and as may be necessary to preserve the full economic viability, marketability, and competitiveness of the Assets To Be Maintained, and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, creditors, agents, and others having business relationships with the Assets To Be Maintained. Included in the above obligations, Respondent shall, without limitation:
1. Make any payment required to be paid under any contract or lease when due, and otherwise satisfy all liabilities and obligations associated with the Assets To Be Maintained;
  2. Provide the Assets To Be Maintained with sufficient financial and other resources to operate at least at current rates of operation, to meet all capital calls, to perform routine or necessary maintenance, to repair or replace facilities and equipment, and to carry on at least at their scheduled pace all capital projects, business plans, development projects, and commercial activities;
  3. Provide such other resources as may be necessary to respond to competition against the Assets To Be Maintained, prevent diminution in sales of the Assets To Be Maintained, and maintain the competitive strength of the Assets To Be Maintained;
  4. Provide support services at levels customarily provided by Respondent;
  5. Maintain all licenses, permits, approvals, authorizations, or certifications related to or necessary for the operation of the Assets To Be Maintained, and otherwise operate the Assets To Be Maintained in accordance and compliance with all regulatory obligations and requirements;
  6. Maintain the Business Information of the Assets To Be Maintained;
  7. Maintain the working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Assets To Be Maintained, including:
    - a. Continuing to provide each of the Divestiture Product Core Employees with all employee benefits offered by Respondent, including regularly

scheduled or merit raises and bonuses, and regularly scheduled vesting of all benefits;

- b. Providing reasonable financial incentives to encourage Divestiture Product Core Employees to continue in his or her position until the Divestiture Date, and as may be necessary to facilitate the employment of such Divestiture Product Core Employees by the Acquirer following the Divestiture Date;
  - c. When vacancies occur, replacing the employees in the regular and ordinary course of business, in accordance with past practice; and
  - d. Not transferring any of the Divestiture Product Core Employees to any of Respondent's assets or businesses that Respondent will not be divesting; and
8. Not reduce, change, or modify in any material respect, the levels of production, quality, pricing, service, or customer support typically associated with the Assets To Be Maintained, other than changes in the ordinary course of business.

*Provided, however,* that Respondent shall not be in violation of this Paragraph II if Respondent takes actions (i) that are explicitly permitted or required by any Divestiture Agreement, or (ii) that have been requested or agreed to by an Acquirer, in writing, and approved in advance by the Monitor (in consultation with Commission staff), in all cases to facilitate the Acquirer's acquisition of the Assets To Be Maintained and consistent with the purposes of the Decision and Order.

### **III. Additional Obligations**

**IT IS FURTHER ORDERED** that:

- A. With respect to any Confidential Business Information received or maintained by Respondent relating to the Assets To Be Maintained, Respondent shall (1) not disclose such Confidential Business Information, including to Respondent's employees; and (2) not use such Confidential Business Information for any reason or purpose; *provided, however,* that Respondent may disclose or use such Confidential Business Information in the course of:
  - 1. Performing its obligations or as permitted under the Decision and Order or any Divestiture Agreement; or

2. Complying with financial, regulatory, or other legal obligations; obtaining legal advice; prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Assets To Be Maintained; or as required by law.
- B. If disclosure or use of any Confidential Business Information is permitted to Respondent's employees or to any other Person under Paragraph III.A. of this Order to Maintain Assets, Respondent shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph III.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
  - C. Respondent shall enforce the terms of this Paragraph III as to their employees or any other Person, and take such action as is necessary to cause each of their employees and any other Person to comply with the terms of this Paragraph III, including implementation of access and data controls, training of their employees, and all other actions that Respondent would take to protect its own trade secrets and proprietary information.

#### **IV. Purpose Clause**

**IT IS FURTHER ORDERED** that the purpose of this Order to Maintain Assets is to (i) maintain and preserve the Assets To Be Maintained as a viable, marketable, competitive, and ongoing business until the divestitures required by the Decision and Order are achieved; (ii) prevent interim harm to competition pending the relevant divestiture and other relief; and (iii) promote achieving the purposes of the Decision and Order.

#### **V. Monitor**

**IT IS FURTHER ORDERED** that:

- A. Richard Shermer shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondent, and attached as Appendix F ("Monitor Agreement") and Non-Public Appendix G ("Monitor Compensation") to the Decision and Order. The Monitor is appointed to monitor Respondent's compliance with the terms of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement.
- B. No later than 1 day after the Acquisition Date, Respondent shall, pursuant to the Monitor Agreement, confer on the Monitor all rights, powers, and authorities necessary to permit the Monitor to monitor Respondent's compliance with the terms of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement, in a manner consistent with the purposes of the orders.

- C. Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor Respondent's compliance with the divestiture and related requirements of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the orders.
  2. The Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondent or of the Commission.
  3. The Monitor shall serve until 15 days after the Monitor has completed his/her final report pursuant to Paragraph IX.D of the Decision and Order, or until such other time as may be determined by the Commission or its staff.
- D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent's compliance with its obligations under this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement.
- E. Respondent shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent's compliance with this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement.
- F. The Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
- G. Respondent shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph V.G, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph V.F of this Order to Maintain Assets.
- H. Respondent shall report to the Monitor in accordance with the requirements of this Order to Maintain Assets or the Decision and Order, and as otherwise provided in the Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted by the Respondent with respect to the performance of Respondent's obligations under this Order to Maintain Assets and the Decision and Order. Within 30

days from the date the Monitor receives the first such report, and every 90 days thereafter (and otherwise as the Commission or its staff may request), the Monitor shall report in writing to the Commission concerning performance by Respondent of their obligations under the orders. The Monitor shall submit a final report to the Commission within 30 days following the satisfaction by Respondent of all its obligations under Paragraphs II and IV of the Decision and Order, unless otherwise directed by the Commission or its staff.

- I. Respondent may require the Monitor and each of the Monitor's consultants, accountants, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. The Commission may require, among other things, the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:
  - 1. The Commission shall select the substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within 10 days after the notice by the staff of the Commission to Respondent of the identity of any proposed Monitor, Respondent shall be deemed to have consented to the selection of the proposed Monitor.
  - 2. Not later than 10 days after the appointment of the substitute Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the relevant terms of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement in a manner consistent with the purposes of the orders and in consultation with the Commission.
- L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Maintain Assets.
- M. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

## VI. Compliance Reports

**IT IS FURTHER ORDERED** that:

- A. Respondent shall:
1. Notify Commission staff via email at [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov) of:
    - a. The Acquisition Date, no later than 5 days after the Acquisition Date; and
    - b. The Divestiture Date, no later than 5 days after the Divestiture Date.
  2. Submit the complete Divestiture Agreement to the Commission at [ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov) and [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov) no later than 30 days after the Divestiture Date.
- B. Respondent shall file verified written reports (“compliance reports”) in accordance with the following:
1. Within 30 days after this Order to Maintain Assets is issued, and every 30 days thereafter until this Order to Maintain Assets terminates, Respondent shall submit to the Commission verified compliance reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all provisions of this Order to Maintain Assets and the Decision and Order. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent is in compliance with this Order to Maintain Assets and the Decision and Order. Conclusory statements that Respondent has complied with its obligations under this Order to Maintain Assets and the Decision and Order are insufficient. Respondent shall include in its reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondent has implemented or plans to implement to ensure that Respondent has complied or will comply with each paragraph of this Order to Maintain Assets and the Decision and Order,
  2. Each compliance report shall be verified in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondent shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at [ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov) and to the Compliance Division at [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov). In addition, Respondent shall provide a copy of each compliance report to the Monitor.
- Provided, however,* that, after the Decision and Order in this matter is issued as final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission on the same timing as, the compliance



reports required to be submitted by Respondent pursuant to the Decision and Order.

### **VII. Change in Respondent**

**IT IS FURTHER ORDERED** that Respondent shall notify the Commission at least 30 days prior to:

- A. Any proposed dissolution of Boston Scientific Corporation;
- B. Any proposed acquisition, merger, or consolidation of Boston Scientific Corporation; or
- C. Any other change in Respondent, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

### **VIII. Access**

**IT IS FURTHER ORDERED** that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to the Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

### **IX. Term**

**IT IS FURTHER ORDERED** that this Order to Maintain Assets shall terminate at the earlier of:

- A. 3 business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. 3 days after the Decision and Order becomes final.

By the Commission.

April J. Tabor  
Acting Secretary

SEAL  
ISSUED: August 6, 2019