

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,) DOCKET NO. C-4684
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 Boston Scientific Corporation (“BSC”), a company subject to the jurisdiction of the Commission, has made an offer to acquire all of the voting securities of BTG, plc (“BTG”), a company 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. RESPONDENT

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 headquarters located at 300 Boston Scientific Way, Marlborough, MA, 01752-1234. BSC is engaged in the development, manufacture, sale, and distribution of medical devices used in a broad range of interventional medical specialties.
2. Respondent BSC 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, 5 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 ACQUIRED COMPANY

3. BTG is a corporation organized, existing, and doing business under and by virtue of the laws of London, England, with its U.S. operational headquarters located at 300 Conshohocken State Road, Conshohocken, Pennsylvania. BTG is engaged in the development, manufacture, sale, and distribution of medical devices used in various interventional medicine applications.
4. BTG 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.

III. THE PROPOSED ACQUISITION

5. On November 20, 2018, BSC announced its intention to acquire, through its wholly-owned subsidiary Bravo Bidco Limited, all of the outstanding voting securities of BTG pursuant to a cash offer, as described in the Recommended Cash Offer for BTG plc by Bravo Bidco Limited, A New Incorporated Entity Indirectly Wholly-Owned by Boston Scientific Corporation, dated November 20, 2018, for approximately \$4.2 billion (the “Acquisition”). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

IV. THE RELEVANT MARKET

6. For the purpose of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is no broader than the development, manufacture, marketing, distribution, and sale of drug eluting beads (“DEBs”).
7. DEBs are microscopic beads used in transarterial chemoembolization (“TACE”) procedures for treating primary and secondary liver cancers. TACE involves the use of embolic agents (typically microscopic beads) mixed with chemotherapy drugs (often doxorubicin) that are delivered to the targeted tumor in the liver via a catheter inserted into the patient’s artery that leads to the tumor. When used in TACE procedures, DEBs work by blocking the flow of blood to the liver tumor, causing it to shrink over time, while simultaneously slowly releasing a chemotherapy agent that also attacks the tumor.
8. For the purpose of this Complaint, the United States is the relevant geographic area in which to assess the competitive effects of the Acquisition in the relevant line of commerce.

V. THE STRUCTURE OF THE MARKET

9. The U.S. market for DEBs is highly concentrated. Respondents BSC and BTG are the two leading suppliers of DEBs in the United States. The only other participant in the U.S. DEB market is Merit Medical, which is substantially smaller than either BSC or BTG.

VI. ENTRY CONDITIONS

10. Entry or expansion into the relevant market would not be likely or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. De novo entry would not take place in a timely manner because the product development, FDA approval, and market adoption times are lengthy. No other entry is likely to occur to deter or counteract the competitive harm likely to result from the Acquisition.

VII. EFFECTS OF THE ACQUISITION

11. The effects of the Acquisition, if consummated, may be to substantially lessen competition 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:
 - i. by eliminating actual, direct, and substantial competition between BSC and BTG in the market for the provision of DEBs;
 - ii. by increasing the ability of the merged entity to unilaterally raise prices for DEBs; and
 - iii. by reducing incentives to improve quality and innovation of DEBs.

VIII. VIOLATIONS CHARGED

12. 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 sixth day of August, 2019, issues its Complaint against said Respondent.

By the Commission.

April J. Tabor
Acting Secretary

SEAL: