ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT
In the Matter of Stryker and Wright Medical
File No. 201-0014

INTRODUCTION

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Stryker Corporation ("Stryker") designed to remedy the anticompetitive effects resulting from Stryker's proposed acquisition of Wright Medical Group N.V. ("Wright"). The proposed Decision and Order ("Order") contained in the Consent Agreement requires Stryker to divest all rights and assets related to its total ankle replacement and finger joint implant businesses to DJO Global, Inc. ("DJO").

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will review the comments received and decide whether it should withdraw, modify, or make the Consent Agreement final.

Under the terms of the Purchase Agreement dated November 4, 2019, Stryker will acquire all of the outstanding shares of Wright for a total equity value of approximately $4 billion ("the Acquisition"). The Commission's Complaint alleges that the proposed Acquisition, if consummated, would violate 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, by substantially lessening competition in the U.S. markets for total ankle replacements and finger joint implants. The proposed Consent Agreement would remedy the alleged violations by preserving the competition that otherwise would be lost in these markets as a result of the proposed Acquisition.

THE PARTIES

Stryker is a global medical device company based in Kalamazoo, Michigan. Stryker organizes its business operations into three segments: orthopedics; medical and surgical; and neurotechnology and spine.

Headquartered in Amsterdam, the Netherlands, Wright is a global medical device company focused on extremities and biologics products. Wright divides its business into four categories: upper extremities; lower extremities; biologics products; and sports medicine.

THE RELEVANT PRODUCTS AND MARKET STRUCTURES

I. Total Ankle Replacements

Total ankle replacements are used to treat end-stage ankle arthritis, in which the cartilage on the tibia (shin), talus (top of the foot), and fibula (calf) bones that form the ankle joint has worn away to create bone-on-bone grinding. Patients with end-stage ankle arthritis—typically aged fifty and older—experience severe pain and swelling of the ankle along with difficulty walking. Total ankle replacements reduce pain while maintaining, and even increasing, ankle motion. In a total ankle replacement procedure, a surgeon removes damaged portions of bone and cartilage and replaces it with a three-piece system. A metal tibial tray, a metal talar dome, and a plastic insert (polyethylene bearing) mimic the cartilage in the joint. In a fixed bearing total ankle replacement, the polyethylene bearing is locked to the tibial component, while in a mobile bearing system it moves independently. Physicians and their patients would not switch to an alternative product or therapy in response to a small but significant increase in the price of total ankle replacements.

Wright and Stryker are the first and third-largest suppliers in the United States, respectively, of total ankle replacements, while Integra LifeSciences ("Integra") is the second-largest supplier. Exactech, Inc. and Zimmer Biomet also supply total ankle replacement products but have only small shares of the U.S. ankle replacement market. Together, Stryker and Wright would account for approximately 75 percent of the market.

II. Finger Joint Implants

Finger joint implants are used to treat advanced osteoarthritis and are implanted into a patient's proximal interphalangeal joints or metacarpophalangeal joints through a surgical procedure to replace damaged bone and cartilage. Arthritis is a gradual, progressive condition typically treated in stages. Physicians seek to use the least invasive treatment option possible to meet each patient's needs, using finger joint implants only when all other options have failed. Physicians and their patients would not switch to an alternative product or therapy in response to a small but significant increase in the price of finger joint implants.

Stryker and Wright are two of only three significant suppliers for finger joint implants in the United States. Integra is the leading supplier while Stryker and Wright are the second and third-largest suppliers, respectively. BioPro Implants ("BioPro") is the only other supplier of finger joint implants in the United States but has a very small share of the U.S. finger joint implant market. The combined Stryker and Wright would have a market share in the United States in excess of 50 percent.

THE RELEVANT GEOGRAPHIC MARKETS

The United States is the relevant geographic market in which to assess the competitive effects of the proposed Acquisition. Total ankle replacements and finger joint implants are medical devices regulated by the U.S. Food and Drug Administration ("FDA"). As such, total ankle replacements and finger joint implants sold outside the United States, but not approved for sale in the United States, do not provide viable competitive alternatives for U.S. consumers.

COMPETITIVE EFFECTS OF THE ACQUISITION

The proposed Acquisition would likely result in substantial competitive harm to consumers in the markets for total ankle replacements and finger joint implants. As suppliers of close substitutes in each relevant market, Stryker and Wright respond directly to competition from each other with improved products, better service, and lower prices. By eliminating this direct and substantial head-to-head competition, the proposed Acquisition likely would allow the combined firm to exercise market power unilaterally, resulting in less innovation and higher prices for consumers.

ENTRY CONDITIONS

Entry in the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the proposed Acquisition. To enter or effectively expand in either relevant market successfully, a supplier would need to design and manufacture an effective product, obtain FDA approval, and develop clinical history supporting the long-term efficacy of its product. The new entrant or expanding firm would also need to develop and foster product loyalty and establish a nationwide sales network capable of marketing the product and providing on-site service at hospitals nationwide. Establishing a track record for quality, service, and consistency is difficult, expensive, and typically requires several years.

THE CONSENT AGREEMENT

The Consent Agreement eliminates the competitive concerns raised by the proposed Acquisition by requiring the parties to divest to DJO all of the rights and assets needed for it to become an independent, viable, and effective competitor in the U.S. markets for total ankle replacements and finger joint implants. The divestitures will maintain the competition that currently exists in each of the relevant markets.

DJO is well positioned to restore the competition that otherwise would be lost through the proposed Acquisition. Headquartered in Vista, California, DJO is a global medical device company that has experience manufacturing, marketing, and distributing orthopedic devices in the United States, and a track record for quality, service, and consistency. DJO's lower and upper extremity product portfolio is also highly complementary to Stryker's total ankle replacements and finger joint implants.

The Order requires Stryker to divest all assets related to the divested businesses other than real property and tangible personal property. The divested assets include all inventory, contracts, permits, intellectual property ("IP"), and business information related to Stryker's total ankle replacement and finger joint implant products. Certain IP, which Stryker uses for both the divested products as well as retained products, will be retained by Stryker and licensed to DJO.

To ensure continuity for customers, the Order requires that Stryker supply DJO with transition assistance sufficient to efficiently transfer the total ankle replacement and finger joint implant assets to DJO and to assist DJO in operating the assets and business, in all material respects, in the manner in which Stryker did prior to the proposed Acquisition. Until DJO obtains FDA approval to become the legal manufacturer of the products, Stryker will act as an intermediary supplier for DJO. Further, the Order requires that the parties transfer all confidential business information to DJO, as well as provide access to employees who possess or are able to identify such information. DJO also will have the right to interview and offer employment to employees associated with the relevant products.

The parties must accomplish these divestitures and relinquish their rights to DJO no later than ten days after the proposed Acquisition is consummated. If the Commission determines that DJO is not an acceptable acquirer, or that the manner of the divestitures is not acceptable, the proposed Order requires the parties to unwind the sale of rights to DJO and then divest the products to a Commission-approved acquirer within six months of the date the Order becomes final. The proposed Order further allows the Commission to appoint a trustee in the event the parties fail to divest the products as required.

The Order also requires the parties to appoint Justin Menezes, from Mazars, as interim monitor to ensure the parties comply with the obligations pursuant to the Consent Agreement and to keep the Commission informed about the status of the transfer of the assets and rights to DJO.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.