

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

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill
 Maureen K. Ohlhausen

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In the Matter of)	
)	
JOHNSON & JOHNSON,)	Docket No. C-4363
a corporation.)	
)	
)	

ORDER TO MAINTAIN ASSETS
[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of Synthes, Inc. (“Synthes”) by Johnson & Johnson (“Respondent J&J”), and Respondent J&J having bee

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, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order to Maintain Assets (“Asset Maintenance Order”):

1. Respondent J&J is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its headquarters address located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933;
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent J&J, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that all capitalized terms used in this Asset Maintenance Order, but not defined herein, shall have the meanings attributed to such terms in the Decision and Order contained in the Consent Agreement. In addition to the definitions in Paragraph I of the Decision and Order attached to the Consent Agreement, the following definitions shall apply:

- A. “Decision and Order” means:
 1. the Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
 2. the Final Decision and Order issued and served by the Commission.
- B. “Orders” means the Decision and Order and this Asset Maintenance Order.

II. (Asset Maintenance)

IT IS FURTHER ORDERED that:

- A. Except in the course of performing its obligations under a Remedial Agreement or as expressly allowed pursuant to this Asset Maintenance Order, Respondent J&J shall not, and shall instruct its Distributors not to, interfere, directly or indirectly, with the DVR Business of the Acquirer.

PROVIDED HOWEVER, that unless otherwise prohibited by the Order, nothing in this Paragraph II.A. shall prevent (a) Respondent J&J or its Distributors (i) from competing for contracts or for the business of suppliers, distributors, resellers, or customers; or (ii)

from engaging in competition for the research, development, manufacture, marketing and sales of Wrist Plating Systems; and (b) Respondent J&J from using its Distributors for se

- d. Respondent J&J shall provide such resources as may be necessary to maintain the competitive strength and positioning of the DVR Business in a business-as-usual manner and/or in accordance with the applicable DVR Business plan;
 - e. Respondent J&J shall make available for use by the DVR Business funds in a business-as-usual manner and/or in accordance with the applicable DVR Business plan sufficient to perform all routine maintenance or replacement, and all other maintenance or replacement of assets as may be necessary to maintain the DVR Business;
 - f. Respondent J&J shall provide the DVR Business with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the DVR Business; and
 - g. Respondent J&J shall provide such support services to the DVR Business as were being provided to such business by Respondent J&J as of the date the Consent Agreement was signed by Respondent J&J.
4. maintain a work force substantially as large as, and with equivalent or better training and expertise to, what was associated with the DVR Business as of the Acquisition Date including, but not limited to, instructing Respondent J&J's Distributors to maintain a work force substantially as large as, a

PROVIDED, HOWEVER, Respondent J&J may satisfy this requirement with respect to any one or more leases or agreements by certifying that the Acquirer has executed such relevant agreements directly with each of the relevant Third Parties.

PROVIDED, FURTHER, HOWEVER, Respondent J&J shall not be required to obtain consents necessary to assign contracts from customers that, in the aggregate, represented less than five percent (5%) of Respondent J&J's United States DVR sales for calendar year 2011.

- B. Within ninety (90) days of the Effective Date, Respondent J&J shall transfer a Cloned Form of the TeamCenter, Agile, and EtQ software programs, together with all data belonging to the Acquirer, and resident on such programs, current as of such transfer date, in a manner that provides the Acquirer independent access to and control over such Cloned Form software programs.
- C. As of the Effective Date, Respondent J&J shall grant to the Acquirer direct access to data belonging to the Acquirer and resident on the TeamCenter, Agile, and EtQ software programs, pursuant to the Remedial Agreement and subject to non-disclosure agreements, until such time as the Acquirer notifies Respondent J&J and the Monitor that the Acquirer has validated the Cloned Form of the software programs with data belonging to the Acquirer, current as of the last transaction executed on Respondent J&J's versions of the TeamCenter, Agile, and EtQ software programs. Respondent J&J shall assist the Acquirer, as is reasonably necessary, to complete the validation process expeditiously.

IV. (Facilitate Hiring)

IT IS FURTHER ORDERED that:

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- (4) unless alternative arrangements are agreed upon with the Acquirer or the Acquirer's Distributors, to retain the obligation to pay the benefits of any Designated Employee who accepts employment with the Acquirer or the Acquirer's Distributors including, but not limited to, all accrued bonuses, vested pensions, and other accrued benefits.

PROVIDED, HOWEVER, that subject to the conditions of continued employment prescribed in this Order, this Paragraph IV.A. shall not prohibit Respondent J&J or Respondent J&J's Distributors from continuing to employ any Designated Employee under the terms of such employee's employment as in effect prior to the date of the written offer of employment from the Acquirer or the Acquirer's Distributor to such employee.

PROVIDED FURTHER, HOWEVER, that subject to the conditions of continued employment prescribed in this Order, this Paragraph IV.A. shall not prohibit Respondent J&J or Respondent J&J's Distributors from enforcing, or requiring as a condition of accepting employment with the Acquirer or the Acquirer's Distributors, an eighteen (18) month non-compete Related To products not divested pursuant to the Remedial Agreement.

- B. Respondent J&J shall not, and Respondent J&J shall instruct its Distributors not to, for a period of two (2) years following the Effective Date, directly or indirectly, solicit, induce, or attempt to solicit or induce any Designated Employee, who is employed by the Acquirer or the Acquirer's Distributors, to terminate his or her employment relationship with the Acquirer or the Acquirer's Distributors.

PROVIDED, HOWEVER, Respondent J&J, Respondent J&J's Distributors, or recruiters retained by Respondent J&J or Respondent J&J's Distributors, may place general advertisements for or conduct general searches for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the Acquirer's or the Acquirer's Distributors' employees;

PROVIDED FURTHER, HOWEVER, Respondent J&J may hire Designated Employees who apply for employment with Respondent J&J as long as such employees were not solicited by Respondent J&J in violation of this Paragraph.

V. (Confidentiality)

- B. The requirements of this Paragraph V do not apply to Confidential Business Information that Respondent J&J demonstrates to the satisfaction of the Commission, in the Commission's sole discretion:
1. was or becomes generally available to the public other than as a result of a disclosure by Respondent J&J;
 2. is necessary to be included in mandatory regulatory filings; *PROVIDED, HOWEVER*, that Respondent J&J shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;
 3. was available, or becomes available, to Respondent J&J on a non-confidential basis, but only if, to the knowledge of Respondent J&J, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information;
 4. is information the disclosure of which is consented to by the Acquirer;
 5. is necessary to be exchanged in the course of consummating the Acquisition or the transactions under the Remedial Agreement;
 6. is disclosed in complying with the Orders;
 7. is information the disclosure of which is necessary to allow Respondent J&J to comply with the requirements and obligations of the laws of the United States and other countries;
 8. is disclosed in defending legal claims, investigations or enforcement actions threatened or brought against Respondent J&J or the DVR Business; or
 9. is disclosed in obtaining legal advice.
- C. The purpose of this Paragraph V is to maintain the full economic viability, marketability and competitiveness of the DVR Business until the Effective Date, to minimize any risk of loss of competitive potential for the DVR Business, to minimize the risk of disclosure and unauthorized use of Confidential Business Information of the DVR Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the DVR Business, except for ordinary wear and tear.

4. The Monitor shall serve, without bond or other security, at the expense of Respondent J&J on such rea

APPENDIX A

MONITOR AGREEMENT

NON-PUBLIC APPENDIX A-1

MONITOR COMPENSATION

[Redacted From the Public Record Version, But Incorporated By Reference]