the Agreement and Proposed Order or in any way to modify their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commission Mozelle W. Thompson in the Matter of Intel Corporation

The Commission has accepted for public comment an Agreement Containing Consent Order (the ''Agreement'') that settles the charges made by the Commission against Intel in an administrative complaint (the ''Complaint''). The Complaint alleged that Intel unlawfully used its monopoly power in the market for general microprocessors, to coerce computer and other peripheral manufacturers to license intellectual property rights to Intel. The Complaint further alleged that Intel engaged in this conduct in order to maintain its monopoly position.

On June 8, 1998, I voted to issue a Complaint in the above-captioned action because I was concerned that these allegations, if true, threatened to harm competition and opportunity for innovation in the general microprocessor market. This threatened harm would thereby deprive consumers of the price and innovation benefits of a truly competitive marketplace. Today, I vote to accept the Agreement for public comment because I believe the Agreement can address these concerns by preserving competition and providing opportunities for innovation by preventing Intel from using intellectual property disputes to limit access to advance technical information or microprocessor products that it routinely provides customers.

I particularly wish to commend the Commission staff and Intel for working together to craft an agreement that effectively serves the public interest in the context of the important characteristics of the high technology computer industry. By eliminating the possibility of anti-competitive withholding of product and information, the Agreement preserves the benefits of competition while creating a climate for new ideas. This creative solution will benefit consumers and industry alike.

Statement of Commissioner Orson Swindle in the Matter of Intel Corporation

As is already widely known, one of the Federal Trade Commission's most significant antitrust adjudications in years was resolved on the eve of trial with the signing of a consent agreement by complaint counsel and respondent Intel Corporation. A hospitalization for major surgery since March 5 has precluded me for the present from considering the settlement of this important case on its merits. I would have strongly preferred to have been able to evaluate it and to participate in the Commission's vote.

Nevertheless, I fully expect to have an opportunity to formulate and communicate my views on the consent agreement, and I anticipate issuing those views—as an aid to public comment on the settlement—as soon as possible during the 60-day comment period. When my statement is ready for issuance, I will ask the Commission's Office of Public Affairs to release it and will also post it on the Commission's website (www.ftc.gov).

[FR Doc. 99–7211 Filed 3–23–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9810329]

Medtronic Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 24, 1999.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Stephen Riddell or Mark Menna, FTC/H–2105, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–2721 or (202) 326–2722.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 8, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of the Proposed Consent Order and Draft Complaint to Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted for public comment from Medtronic, Inc. (''Medtronic'' or ''proposed Respondent'') an Agreement Containing Consent Order (''the proposed consent order''). The proposed Respondent has also reviewed a draft complaint contemplated by the Commission. The proposed consent order is designed to remedy likely anticompetitive effects arising from the acquisition of Avecor Cardiovascular, Inc. (''Avecor''). Both Medtronic and Avecor are medical technology companies that compete in the manufacture and sale of non-occlusive arterial pumps, perfusion devices used in heart/lung machines. The proposed consent order remedies the acquisition's anticompetitive effects by requiring Medtronic to divest Avecor's non-occlusive arterial pump assets (''Avecor Pump Assets'') as a viable, on-going product line. Medtronic has entered into an agreement to divest the Avecor Pump Assets to Baxter Healthcare Corporation (''Baxter'').

Medtronic, which is headquartered in Minneapolis, Minnesota, is engaged in the research, development, manufacture and sale of medical devices, including implantable devices, such as pacemakers and defibrillators, which regulate heart rhythm; tissue and mechanical heart valves; coronary stents; and perfusion devices for heart/lung machines. Medtronic's perfusion devices include non-occlusive arterial pumps. Medtronic's Bio-Pump is the market leader in non-occlusive arterial pumps. Avecor, also headquartered in Minneapolis, Minnesota, is engaged in the research, development, manufacture and sale of perfusion devices, including,

among other things, non-occlusive arterial pumps. Avecor introduced its non-occlusive arterial pump is the Fall of 1997. Avecor's pump, which utilizes different technology, is still in the early stages of gaining market acceptance. Some in the industry believe that this new pump may offer consumers advantages over the Bio-Pump and other conventional non-occlusive pumps.

Pursuant to an Agreement and Plan of Merger (''Merger Agreement''), signed July 12, 1998, and as subsequently amended, Medtronic agreed to acquire 100% of the voting stock of Avecor for approximately $106 million. The proposed Complaint alleges that the Merger Agreement violates Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and that the acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. § 15, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the United States market for the research, development, manufacture and sale of non-occlusive arterial pumps.

The draft complaint alleges that medtronic's proposed acquisition of Avecor would lessen competition in the United States market for research, development, manufacture and sale of non-occlusive arterial pumps. Arterial pumps are a perfusion device used primarily to stand in for the heart and lungs during surgical procedures involving those organs. Perfusion devices are products that handle blood in heart/lung machines. These devices circulate and oxygenate the blood and regulate body temperature during heart bypass surgery and other procedures where the heart must be relieved of its pumping function. Arterial pumps circulate the blood. According to the complaint, there are no competitive substitutes for non-occlusive arterial pumps.

The complaint alleges that the United States is the relevant geographic market in which to analyze the effects of the proposed acquisition.

The complaint alleges that the United States market for research, development, manufacture and sale of non-occlusive arterial pumps is highly concentrated, and would become significantly more concentrated as a result of the acquisition. Premerger concentration in this market, as measured by the Herfindahl-Hirschamann Index,[1] exceeds 5,700, and the acquisition would increase the HHI by more than 340 to more than 6,050.

According to the draft complaint, entry into the United States market for research, development, manufacture and sale of non-occlusive arterial pumps is difficult and would not be timely, likely or sufficient to prevent the adverse competitive effects that may result from the proposed acquisition.

The proposed consent order remedies the Commission's competitive concerns about the proposed acquisition. Under Paragraph II of the proposed consent order, Medtronic must divest all of the assets relating to Avecor's non-occlusive arterial pump to Baxter or to another acquirer approved by the Commission. Baxter is a major producer of medical devices used in cardiac surgery and has substantial experience in the research, development, manufacture and sale of other perfusion devices used in cardiac surgery bypass operations. Baxter also is a major provider of perfusion services. In the event that Medtronic does not sell these assets to Baxter or another Commission-approved buyer within ninety (90) days of the Order's becoming final, the Commission may appoint a trustee to divest the Avecor Pump Assets.

The Commission's purpose in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed buyer must not itself present competitive problems. The Commission believes that Baxter is well qualified to operate the divested assets and that divestiture to Baxter will not be anticompetitive in this market.

The proposed consent order requires Medtronic to provide substantial assistance to the buyer of the Avecor Pump Assets to enable the buyer to obtain FDA approval to manufacture and market the Avecor pumps and reservoirs to use with the pump. First, Medtronic must contract manufacture a supply of the Avecor pumps and the reservoirs used with the Avecor pumps for a year while the buyer establishes its own manufacturing capability. Medtronic must continue to supply the buyer with such reservoirs for a second year if the buyer determines that it needs additional time to establish the manufacturing capability to produce a reservoir to use with the Avecor pump. Second, Medtronic must provide technical assistance to help the buyer obtain necessary FDA approvals and to acquire the capability to manufacture the Avecor pump. Finally, the proposed consent order provides the buyer with the opportunity to hire Avecor employees associated with the Avecor Pump Assets.

In order to facilitate the smooth transfer of assets and ensure that the buyer will get the assistance necessary to independenty manufacture the Avecor pump, the proposed consent order also provides for the appointment of an interim trustee. The interim trustee will serve until the acquirer has received all necessary FDA approvals to manufacture the Avecor pump and becomes an independent producer of the Avecor pump.

Under certain circumstances if the Commission-approved buyer fails to become a viable, independent manufacturer and seller of Avecor pump, the Commission may terminate the divestiture and appoint a divestiture trustee to find a new buyer for the Avecor pump assets. If, prior to obtaining the necessary FDA approvals and beginning to manufacture Avecor pump and a compatible reservoir, the buyer stops selling the Avecor pump for 60 days or otherwise fails to make good faith efforts to sell it, the Commission may step in and terminate the divestiture. The Commission may also terminate the divestiture if the buyer fails to make good faith efforts to obtain the necessary FDA approvals. Similarly, the Commission may revoke the divestiture if the buyer fails to obtain the FDA approvals or to begin manufacturing within one year. Under this last scenario, the Commission may refrain from revoking the divestiture (for a second year) if it appears that the buyer is likely to obtain the FDA approvals or begin to manufacture the products in that time period.

The proposed consent order also required Medtronic to provide to the Commission a report of compliance with the divestiture and assistance provisions of the proposed consent order within sixty (60) days following the date the proposed consent order becomes final and every ninety (90) days thereafter until Medtronic has completed the divestiture and the acquire has obtained all necessary FDA approvals and has become an independent manufacturer of the Avecor pump and a reservoir that can be used with the Avecor pump. The proposed consent order also requires Medtronic to notify the Commission at least thirty (30) days prior to any change in the structure of Medtronic that may affect compliance with the proposed consent order.

[1] The Herfindahl-Hirschmann Index, or ''HHI,'' is a measurement of market concentration calculated by summing the squares of the individual market shares of all participants in the market. Under section 1.51 of the Horizontal Merger Guidelines issued April 2, 1992, by the Federal Trade Commission and the Department of Justice, the Commission considers concentration levels exceeding 1,800 as ''highly concentrated'' and concentration levels between 1,000 and 1,800 as ''moderately concentrated.''

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw the argument or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to facilitate public comment on the proposed consent order, including the proposed sale of the Avecor pump assets to Baxter, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order, nor is it intended to modify the terms of the proposed consent order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–7210 Filed 3–23–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ricky Ray Hemophilia Relief Fund Act of 1998, Procedures for Filing Petitions for Payment

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services (HHS) announces procedures for filing Notices of Intent to File Petitions for payment under the newly enacted Ricky Ray Hemophilia Relief Fund Act of 1998 (''the Act''). Although the Act became law on November 12, 1998, no funds have been appropriated either for the payment of awards to petitioners or for the administrative costs to HHS for operating this new program. Nevertheless, the Act states that HHS shall first establish procedures to implement the Act within 120 days of its enactment. We are establishing as a first procedure under the Act the opportunity for individuals to file Notices of Intent to File Petitions, which may lead to later filings of full petitions and determinations on those petitions if funding is appropriated to operate the program and to pay awards. The timely filing of a Notice of Intent to File a Petition will meet a petitioner's obligation to file within the statutory limitations period for seeking payment from the Ricky Ray Hemophilia Relief Fund. Again, since no funds have been appropriated for this program, submitting a Notice of Intent to File a Petition allows a petitioner to record his or her intent to seek payment should Congress appropriate funds in the future.

ADDRESSES: Notices of intent meeting the requirements described below shall be sent to: Ricky Ray Program Office, Bureau of Health Professions, Room 8–05, 5600 Fishers Lane, Rockville, Maryland 20857.

DATES: The procedures established by this noticed shall take effect on April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Neil Sampson, Deputy Associate Administrator for Health Professions, Health Resources and Services Administration, Room 805, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2330.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Act provides for compassionate payments with regard to certain individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus (HIV) due to contaminated antihemophilic factor within specified time periods. Section 101 of the Act establishes in the Treasury of the United States a trust fund known as the Ricky Ray Hemophilia Relief Fund. The Act authorizes appropriations to the Fund of $750,000,000. To date, no appropriations have been made for the Fund. In addition, no appropriations have been made for the administrative costs to HHS for operating this program.

Section 102(a) of the Act provides that, if there are sufficient amounts in the Fund to make each payment, the Secretary shall make a single payment of $100,000 to any individual who has an HIV infection and who is described in one of the following paragraphs:

(1) The individual has any form of blood-clotting disorder, such as hemophilia, and was treated with antihemophilic factor at any item during the period beginning on July 1, 1982, and ending on December 31, 1987.

(2) The individual is (A) the lawful spouse of an individual described in paragraph (1) or (B) the former lawful spouse of an individual described in paragraph (1) and was the lawful spouse of the individual at any time after a date, within the period described in paragraph (1) on which the individual was treated as described in paragraph (1) and can assert reasonable certainty of transmission of HIV from such individual.

(3) The individual acquired HIV infection through perinatal transmission from a parent who is an individual described in paragraph (1) or (2).

Section 103 provides for the payment to certain survivors if the individuals listed in section 102 are deceased when that payment is to be made. If the individual eligible for payment dies before filing a petition, a survivor may file a petition on his or her behalf (section 103(c)(2)(B) of the Act).

Although an attorney or other representative is not required, petitioners may engage the services of an attorney or other agent to render services in connection with the petition. No such attorney or agent may receive for services rendered more than five percent of an payment made under the program (section 107 of the Act).

For the full text of the Act, individuals may consult the World Wide Web site of the Library of Congress at ''http://thomas.loc.gov'' and seek Public Law 105–369, or they may seek the public law from a law library.

II. Statutory Procedures

Under section 105 of the Act, petitions seeking payment from the Ricky Ray Hemophilia Relief Fund must be filed by eligible petitioners within 3 years after the date of enactment of the Act, i.e., by November 11, 2001. Accordingly, even though no appropriations have been made for payment with respect to petitioners or for administration of the program, we are establishing the following first procedures to implement the Act.

III. Filing of Notice of Intent

An eligible individual may submit a Notice of Intent to File a Petition stating an intent to file a full petition when appropriate. The Notice of Intent shall include the following:

(1) The name of the petitioner, with current address and phone number.

(2) The name, address, and phone number of the petitioner's attorney of record or other representative for the petition, if any.

The notice of intent shall be sent to: Ricky Ray Program Office, Bureau of Health Professions, Room 8–05, 5600 Fishers Lane, Rockville, Maryland 20857.

On receipt of the Notice of Intent to File a Petition, we will respond with an acknowledgment reflecting a case number assigned to the filing.