

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

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|--------------------------------|---|-------------------|
| In the Matter of |) | |
| |) | |
| BECTON, DICKINSON AND COMPANY, |) | |
| a corporation; |) | |
| |) | |
| and |) | Docket No. C-4637 |
| |) | |
| C. R. BARD, INC., |) | |
| a corporation. |) | |
| |) | |

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (Commission), having initiated an investigation of the proposed acquisition by Respondent Becton, Dickinson and Company (BD) (of Respondent C. R. Bard Inc. ("Bard"), collectively ("Respondents"), and Respondents having been furnished thereafter with a copy of a draft of the Complaint ("Complaint") that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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; and

Respondents, their attorneys, and counsel for the Commission hereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the m fac4(spT)3(s)-1(a)4(nd))TJ Ting of d-2(t)

the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent BD is a corporation organized, existing and doing business under and by

Order), nor take any action that lessens the full economic viability, marketability, or competitiveness of the related Divestiture Product Businesses.

- B. Until Respondents fully transfer and deliver each of the respective Divestiture Product Assets to an Acquirer, Respondents shall maintain the operations of the related Divestiture Product Businesses in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business) and/or as may be necessary to preserve the full economic viability, marketability, and competitiveness of such Divestiture Product Businesses and shall use their best efforts to preserve the existing relationships with the following: ~~supply~~ vendors and distributors, ~~and~~ use customers; Agencies; employees; and others having business relations with each of the respective Divestiture Product Businesses. Respondents' responsibilities shall include, but are not limited to, the following:
1. providing each of the respective Divestiture Product Businesses with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans, and promotional activities for such Divestiture Product Business;
 2. continuing, at least at their scheduled pace, any additional expenditures ~~of~~ of the respective Divestiture Product Businesses authorized prior to the date the Consent Agreement was signed by the Respondents, including, but not limited to, all research, Development, manufacturing, distribution, marketing, and sales expenditures;
 3. providing such resources as may be necessary to respond to competition against each of the Divestiture Products and/or to prevent any diminution in sales of each of the Divestiture Products during and after the Acquisition process and prior to the complete transfer and delivery of the related Divestiture Product Assets to an Acquirer;
 - 4.

large in size (as measured in full time equivalents) as, and (ii) comparable in training, and expertise to, what has been associated with the Divestiture Products for the relevant Divestiture Product's last fiscal year.

D. For each Acquirer of a Divestiture Product, Respondents shall:

1. no later than the earlier of ten (10) days after a request from the Proposed Acquirer or ten (10) days before the Closing Date if requested by a Proposed Acquirer, provide to the Proposed Acquirer a list of all Employees and, in compliance with and to the extent permitted by all Laws, and an opportunity to inspect the personnel files and other documentation relating to such Employees. The list of Employees that Respondents shall provide shall include the following information for each Employee, as requested by the Proposed Acquirer, and to the extent permitted by Law:
 - a. name, job title or position, date of hire by the relevant Respondent, and effective service date;
 - b. specific description of the employee's responsibilities and primary work location;
 - c. the base salary or current wages;
 - d. most recent bonus paid, aggregate annual compensation for the relevant Respondent's last fiscal year, current target or guaranteed annual bonus or commission opportunities and target long term incentive opportunities, if applicable;
 - e. employment and leave status (i.e., active or on leave or disability), full or parttime; reason for leave and expected date of return from leave, in each case, if applicable; accrued and unused vacation, sick leave, and personal time off days;
 - f. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 - g. at the Proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Employee.
2. no later than ten (10) days before the Closing Date, allow the Proposed Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of Respondents with any Employee, and to make offers of employment to any one or more of the Employees;
3. not interfere, directly or indirectly, with the hiring or employing of any Employee by the Proposed Acquirer, not offer any incentive to any Employee to decline employment with the Proposed Acquirer, not make any counter offer to any

Employee who has an outstanding offer of employment from the Proposed Acquirer or who has accepted an offer of employment from the Proposed Acquirer, and not otherwise interfere with the recruitment or employment of an Employee by the Proposed Acquirer;

4. remove any impediments within the control of Respondents that may deter any

1. develop and implement a detailed transition plan to ensure that the commencement of the marketing, distribution, and sale of such Divestiture Products by the Acquirer is not delayed or impaired by the Respondents;
2. designate employees of Respondents knowledgeable about the marketing, distribution, and sale related to each of the Divestiture Products who will be responsible for communicating directly with the Acquirer, and the Monitor (if one has been appointed), for the purposes of assisting in the transfer to the Acquirer of the Business related to the Divestiture Products;
3. maintain and manage inventory levels of the Divestiture Products in consideration of the marketing and distribution transition to the Acquirer;
- 4.

2. not disclose or convey any such Confidential Business Informatio

Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as ~~are~~ ^{reasonably} necessary to carry out the Monitor's duties and responsibilities.

- D. Respondents 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, exc

