

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC  
COMMENT**

*In the Matter of Boston Scientific Corporation  
File No. 191-0039*

**INTRODUCTION**

## **THE RELEVANT PRODUCT AND STRUCTURE OF THE MARKET**

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.

BTG and BSC are the two leading suppliers of DEBs in the United States and are each other’s closest competitors. The only other participant in the U.S. DEB market is Merit Medical (“Merit”), which is substantially smaller than either BSC or BTG.

## **THE RELEVANT GEOGRAPHIC MARKET**

The United States is the relevant geographic market in which to assess the competitive effects of the proposed transaction. The United States is the relevant geographic market because the vast majority of DEBs are sold in the United States, and the vast majority of DEBs are sold in the United States. The United States is the relevant geographic market because the vast majority of DEBs are sold in the United States, and the vast majority of DEBs are sold in the United States. The United States is the relevant geographic market because the vast majority of DEBs are sold in the United States, and the vast majority of DEBs are sold in the United States.

manufactures bland beads on the same production line as DEBs. Thus, including the bland bead business in the divestiture package will ensure that Varian has outright ownership of all necessary intellectual property and allow it to manufacture DEBs at a cost and output level comparable to that of BSC. BSC must divest all assets and rights to research, develop, manufacture, market, and sell the BSC DEB and bland bead products, including all related intellectual property and other confidential business information, manufacturing technology, existing inventory, and all related agreements to manufacture and distribute the products. Additionally, to ensure that the divestiture is successful and maintain continuity of supply, the proposed Order requires BSC to supply Varian with DEBs and bland beads for a limited time while Varian establishes its own manufacturing capability. The provisions of the Consent Agreement ensure that Varian becomes an independent, viable, and effective competitor in the U.S. market in order to maintain the competition that currently exists.

Headquartered in Palo Alto, California, Varian operates globally and develops, manufactures, and markets a variety of medical devices and software for treating cancer and other medical conditions. Varian's existing interventional oncology business includes products that are highly complementary to the divestiture assets. Varian has the expertise, U.S. sales infrastructure, and resources to restore the competition that otherwise would have been lost due to the proposed Acquisition.

BSC must accomplish the divestitures no later than ten days after consummating the proposed Acquisition. If the Commission determines that Varian is not an acceptable acquirer, or that the manner of the divestitures is not acceptable, the proposed Order requires BSC to unwind the sale of rights and assets to Varian and then divest the affected products to a Commission-approved acquirer within six months of the date the Order becomes final. To ensure compliance with the Order, the Commission has agreed to appoint a Monitor to ensure that BSC complies with all of its obligations pursuant to the Consent Agreement and to keep the Commission informed about the status of the transfer of the DEB and bland bead rights and assets to Varian. The proposed Order further allows the Commission to appoint a trustee in the event that BSC fails to divest the products as required.

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.