

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

COMMISSIONERS:

3. Prosthetic legs are used by individuals who have had a transfemoral, or above-knee, amputation. Amputation is possible in any age group, but the prevalence is highest among people sixty-five years and older. Approximately 70 percent of above-knee amputations are required due to diseases, like vascular complications or cancer, and 20 percent are due to trauma, as is the case with amputations resulting from combat injuries to soldiers.
4. Respondent Otto Bock views Freedom as a direct and serious competitive threat. From Otto Bock's perspective, [REDACTED]
5. Freedom has provoked a vigorous battle with Respondent Otto Bock to win microprocessor prosthetic knee customers by employing a [REDACTED] offering various discounting promotions, and regularly launching product upgrades. For example, Freedom launched the Plié 3 in 2014, and according to its CEO the Plié 3 became the [REDACTED] and gained significant market share. In July 2015, "Otto Bock introduced the C-leg 4 [REDACTED] and took significant business away from the Plié 3. In response, Freedom quickly launched marketing initiatives specifically [REDACTED] and successfully won back significant business from Otto Bock.
6. Competition between Respondent Otto Bock and Freedom was poised to increase in the near future. Part of Freedom's competitive response to the success of the C-leg 4 was to develop a next-generation microprocessor prosthetic knee, named [REDACTED], which it planned to launch in [REDACTED]. Freedom's Board of Directors expected that [REDACTED] would be [REDACTED] and Freedom's former CEO called [REDACTED] a [REDACTED]. Customers who have tested [REDACTED] are enthusiastic about its features and anticipated price point. Freedom planned to pitch [REDACTED] as a better product, for a lower price, than Otto Bock's C-Leg 4. Freedom expected Otto Bock to quickly complete development of a fifth generation of C-Leg, with which the [REDACTED] would compete directly.
7. Respondent Otto Bock learned about the [REDACTED] during its due diligence before the Merger, repeatedly referred to it as a [REDACTED] to the market-leading C-Leg 4. Otto Bock viewed the Freedom acquisition a [REDACTED]
8. Competition between Respondent Otto Bock and Freedom has provided substantial benefits to amputees in the United States. The two companies have each responded to the other's introduction of new models of microprocessor prosthetic knees with improved features and functions of their own that have increased the safety, health, and quality of life for amputees. The intense competition between Respondent Otto Bock and Freedom also has resulted in significantly lower prices for microprocessor prosthetic knees purchased by prosthetic clinics, which fit amputees with microprocessor prosthetic knees.

The savings generated by that competition have allowed prosthetic clinics to offer amputees better care and service. These competitive benefits likely would have increased with the impending launch of the [REDACTED].

9. With the Merger, Otto Bock's share of the U.S. market for microprocessor prosthetic knees exceeds [REDACTED]. The Merger significantly increased concentration in the already highly concentrated market for microprocessor prosthetic knees in the United States, making the Merger presumptively unlawful under the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines").
10. New entry or expansion by other manufacturers of microprocessor prosthetic knees is not likely to be timely or sufficient to offset the anticompetitive effects of the Merger. It routinely takes firms in excess of two years just to develop a microprocessor prosthetic knee even when they are building on their own existing microprocessor prosthetic knee technology. For example, Freedom spent [REDACTED] developing its next-generation microprocessor prosthetic knee and was [REDACTED] from introducing it at the time of the Merger. For potential entrants with no prior experience in the market, developing a competitive microprocessor prosthetic knee likely would take significantly longer.
11. The Merger will not result in merger-specific efficiencies sufficient to outweigh the competitive harm caused by the Merger.

II.

BACKGROUND

A.

Jurisdiction

12. Respondent, and each of its relevant operating entities and parent entities are, and at all relevant times have been, engaged in commerce or in activities affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.
13. The Merger constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

B.

Respondent

14. Respondent Otto Bock is a Minnesota corporation, with its U.S. headquarters in Austin, Texas. Otto Bock's parent company, Otto Bock HealthCare GmbH, is headquartered in Duderstadt, Germany. Respondent Otto Bock is a leading global provider of upper and lower limb prosthetics, orthotics, mobility solutions, and medical care. Respondent Otto Bock currently markets the C-Leg 4 microprocessor prosthetic knee, as well as other prosthetic knees, ankles, and feet. The company was founded in 1919, has over 7,000 employees worldwide, and operates in fifty countries.
15. Freedom, now owned by Respondent Otto Bock, was founded in 2002. Prior to the Merger, Freedom had been privately owned and headquartered in Irvine, California, and specialized in the manufacture and sale of lower limb prosthetics. Among the many prosthetic knee, ankle, foot, and related products it sold were the Plié 3 microprocessor prosthetic knee and the Kinnex microprocessor prosthetic foot. Pre-Merger, Freedom designed and manufactured prosthetic products at facilities in California and Utah and employed approximately 150 people. Health Evolution Partners Fund I (AIV I), LP ("Health Evolution Partners"), a private equity firm, was the majority shareholder of Freedom at the time of the Merger.

C.

The Merger

16. Pursuant to an Agreement and Plan of Merger ("Merger Agreement"), Respondent Otto Bock acquired Freedom from Health Evolution Partners for [REDACTED] on September 22, 2017. Respondent Otto Bock and Health Evolution Partners simultaneously signed the Merger Agreement and consummated the Merger.

III.

THE RELEVANT MARKET

17. The relevant market in which to analyze the effects of the Merger is no broader than the manufacture and sale of microprocessor prosthetic knees to prosthetic clinics in the United States.

A.

Relevant Product Market

18.

23. The L-Code system, created by Medicare and followed by most private insurers, establishes the reimbursement clinics receive for prosthetics, including microprocessor prosthetic knees and mechanical prosthetic knees. The Centers for Medicare & Medicaid Services (“CMS”), as well as most private insurers, generally only provide reimbursement for microprocessor prosthetic knees for K3 and K4 amputees. K2 amputees generally can only receive reimbursement for mechanical knees generally. “Cx [65.184 3 ()Tj

V.

ANTICOMPETITIVE EFFECTS

39. The Merger eliminated significant and close competition between Respondent Otto Bock and Freedom in the U.S. market for microprocessor prosthetic knees, harming consumers substantially. Prior to the Merger, Respondent Otto Bock and Freedom engaged in vigorous, sustained price and innovation competition to the benefit of prosthetic clinics and amputees.
40. Manufacturers of lower-limb prosthetic components compete to win the business of prosthetic clinic customers. Prosthetists select and purchase microprocessor prosthetic knees and other components from manufacturers and provide them to their amputee patients. Under Medicare's L-Code system, prosthetic clinics are reimbursed similar amounts for most microprocessor prosthetic knees, regardless of the manufacturer.
41. Competition between manufacturers of microprocessor prosthetic knees to win the business of prosthetic clinics results in cost savings and other benefits. Microprocessor prosthetic knees manufactured by Otto Bock and Freedom are the first and second choices for many prosthetic clinic customers.
42. Manufacturers of microprocessor prosthetic knees compete to win the business of prosthetic clinics by improving their products. Competition between Otto Bock and Freedom has led to advancements in microprocessor prosthetic knees. Freedom and Respondent Otto Bock both have responded to the other's innovations in product features and functionality of their microprocessor prosthetic knees. These innovations have had a direct impact on the health and welfare of amputees, who rely on these prosthetics for their mobility and quality of life.
43. Otto Bock introduced C-Leg in the United States in 1999. C-Leg was the first microprocessor prosthetic knee on the market. Since its introduction, Otto Bock has been the market leader in terms of sales.
44. Since it launched the Plié microprocessor prosthetic knee in 2008, Freedom's strategy has been to offer customers a similar, but lower-priced, alternative to Otto Bock's microprocessor prosthetic knees. Freedom introduced the Plié 3, its third-generation microprocessor prosthetic knee, in 2014. For that product, Freedom adopted a strategy, setting the average sales price of the Plié 3 lower than Otto Bock's C-Leg 3. Additionally, the Plié 3 offered innovative new features over Otto Bock's (and others') microprocessor prosthetic knees, including water resistance. According to Freedom's CEO, when Freedom launched the Plié 3, it set the industry standard for microprocessor prosthetic knees.
45. When Freedom introduced Plié 3 in 2014, customers shifted purchases from Otto Bock's C-Leg to the Plié because the Plié offered similar or better functions at a discounted price. Competition between Respondent Otto Bock and Freedom has resulted in lower

prices for microprocessor prosthetic knees. Prosthetists have been able to increase the

52. Freedom's enthusiasm about the market potential for the _____ grew after it performed initial patient test fittings. In April 2017, after _____ test fittings of _____, Freedom's Board of Directors noted that _____ and that _____ and concluded that _____

53. By September 2017, _____ were complete. According to _____

57. Respondent Otto Bock's acquisition of Freedom eliminated the competition between them and has already harmed consumers. The harm from the Merger is ongoing. The elimination of an independent Freedom has removed from the market a maverick firm that had competed against Otto Bock (and other suppliers of microprocessor prosthetic knees)

VII.

EFFICIENCIES

62. Respondent Otto Bock cannot show that merger-specific efficiencies would result from the Merger that will offset the anticompetitive effects. Freedom's CEO admitted that, prior to the Merger, he had discussed possible synergies of the Merger with Respondent Otto Bock and that Otto Bock concluded that Respondent Otto Bock admits that the only cost savings it expects to achieve come from the consolidation of general and administrative functions. These cost savings are not merger-specific.

VIII.

FAILING FIRM

63. A failing firm defense does not immunize the Merger. Health Evolution Partners did not make good-faith efforts to elicit offers for Freedom or its assets from numerous prosthetic product manufacturers. Health Evolution Partners rejected a reasonable alternative offer, substantially exceeding liquidation value, for Freedom. Furthermore, Freedom was on a positive financial trajectory with a

NOTICE

Notice is hereby given to the Respondent that the twenty-second day of May, 2018, at 10 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place, when and where an evidentiary hearing will be had before an Administrative

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Merger challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and/or Section 7 of the Clayton Act, as amended, the Commission may order such relief against Respondent as is supported by the record and is necessary and appropriate, including, but not limited to:

1. Divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant market, with the ability to offer such products as Respondent Otto Bock and Freedom were offering and planning to offer prior to the Merger.

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