

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

COMMISSIONERS: **Lina M. Khan, Chair**
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson

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In the Matter of)	
)	
Medtronic plc,)	
a public limited company,)	Docket No. C-4763
)	
Medtronic, Inc.,)	
a corporation, and)	
)	
Intersect ENT, Inc.,)	
a corporation.)	
)	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Medtronic plc, through its subsidiary Respondent Medtronic, Inc., has entered into an agreement to acquire Respondent Intersect ENT, Inc., that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows.

I. RESPONDENTS

1. Respondent Medtronic plc is a public limited company organized, existing, and doing business under and by virtue of the laws of Ireland, with its executive offices and principal place of business located at 20 Lower Hatch Street, Dublin 2, and its United States address for service of process is 710 Medtronic Parkway, Minneapolis, Minnesota 55432.

2. Respondent Medtronic, Inc. (“Medtronic”), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its executive offices and principal place of business located at 710 Medtronic Parkway, Minneapolis, Minnesota 55432.

significant competitors in the market for balloon sinus dilation products—Acclarent, Inc., a subsidiary of Johnson & Johnson; and Stryker Corporation, the now owner of Entellus Medical. Therefore, the Acquisition, if consummated, would reduce the number of independent manufacturers of balloon sinus dilation products from four to three. Fiagon, having just entered the U.S. market in 2021 after securing regulatory approvals, is poised to become an important competitive constraint on these established ENT market leaders, including Medtronic. Medtronic’s dominant position in ENT navigation systems is challenged only by Acclarent, Stryker, Brainlab AG, Karl Storz SE & Co. KG, and Fiagon.

VI. BARRIERS TO ENTRY

11. Entry into each relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. *De novo* entry would not take place in a timely manner because product development times, U.S. Food and Drug Administration approval requirements, and market adoption times are lengthy. A potential entrant into the relevant markets would also need to develop a reputation for consistent quality and service before physicians and health systems would substitute them for currently marketed devices.

VII. EFFECTS OF THE ACQUISITION

12. The effects of the Acquisition, if consummated, may be to substantially lessen competition or to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by:
 - a. eliminating actual, direct, and future competition between Medtronic and Intersect in the relevant markets; and
 - b. increasing the likelihood in the relevant markets that (1) Medtronic would unilaterally exercise market power, (2) research and development would be reduced, and (3) customers would be forced to pay higher prices.

VIII. VIOLATIONS CHARGED

13. The Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.
14. The Agreement and Plan of Merger entered into by Respondents constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

IN WITNESS WHEREOF, the Federal Trade Commission, having caused this Complaint to be signed by the Secretary and its official seal affixed, at Washington, D.C., this seventh day of May 2022, issues its Complaint against Respondents.

By the Commission.

April J. Tabor
Secretary