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Department of Justice Sues Boston Scientific Corp. Seeking Civil Penalties and Other Relief for Violations of 1995 FTC Order

Suit Alleges Violations Concerning Company's Purchase of Major Competitors in Market for Imaging Catheters

FOR RELEASE

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Citing several violations of a 1995 Federal Trade Commission consent order, the U.S. Department of Justice (DOJ) has filed a complaint against Boston Scientific Corporation (BSC), on behalf of the Commission, seeking civil penalties and other equitable relief. According to the complaint, BSC failed to comply with the FTC's order, which was entered to remedy the anticompetitive effects of its acquisitions of Cardiovascular Imaging Systems, Inc. (CVIS) and SCIMED Life Systems, Inc. (SCIMED). At the time of the order, CVIS was BSC's competitor in the market for intravascular ultrasound (IVUS) catheters, and SCIMED was poised to enter that market. Due to its failure to comply with the order, BSC has achieved a virtual monopoly over the sale of IVUS catheters and consoles in the United States.

Used with a console, IVUS catheters allow doctors to view real-time images in the artery of the patient being treated to determine the dimension, placement and composition of arterial plaque. The IVUS catheter and ultrasound console are used with balloon angioplasty and coronary stent placement to improve treatment using those devices.

"The purpose of Commission orders is to restore the competition lost from illegal mergers," said the FTC's Bureau of Competition Director Richard Parker. "We believe the evidence will show that Boston Scientific violated the terms of the FTC's order and eliminated competition in this highly specialized marketplace. Such anticompetitive actions cannot, and will not, be tolerated."

In 1995, when BSC sought to acquire CVIS and SCIMED, the FTC brought suit to block the deals. CVIS, BSC, and a company called Endosonics were the only catheter manufacturers in the marketplace, and SCIMED was the only firm likely to enter soon. BSC would have controlled virtually the entire U.S. catheter market following the two acquisitions. The FTC withdrew its objections to the deals after BSC entered into a consent agreement

with the Commission. The Commission's intent, as detailed in the 1995 order, was to ensure continued competition by allowing a new catheter manufacturer to enter the business.

The Commission approved Hewlett-Packard Company (HP) as a buyer for a license to enable it to compete in the catheter market. At the time HP was in the console, but not the catheter, market. HP and BSC entered into a license agreement, and the Commission approved the terms of the agreement. The FTC's order and the agreement required BSC to: 1) ensure HP had access to certain necessary intellectual property; 2) provide HP with technical information 180 days before BSC introduced a new catheter to the market; and 3) supply HP with all the catheters it requested for four years. All of these requirements were designed to enable HP to produce its own competitive line of catheters and to ensure BSC would provide HP with catheters compatible with its consoles while HP was developing its own catheter product.

However, according to the Commission, while BSC understood the consent agreement it signed (which the Commission issued as final after a public comment period), BSC breached the terms of the order, eventually leading HP to give up trying to enter the catheter market and to exit the console market altogether in November 1998. As a result, in early 1999 HP filed a private action against BSC alleging breach of contract, monopolization and attempted monopolization. The parties recently entered into a settlement agreement, and the case has been withdrawn from litigation.

The Justice Department's complaint contends that BSC violated the 1995 order by failing to provide HP with a license to all its intellectual property "relating to IVUS catheters." Specifically, BSC refused to provide HP with a license for the Webler patent, an automatic pull-back device (APD) used to obtain reliable and reproducible measurements of plaque placement and dimensions in the artery. BSC also violated the order by refusing to provide the information required to run several BSC catheters and by refusing to supply HP with BSC's new "Discovery" catheter.

The complaint seeks civil penalties and other equitable relief. The Commission vote to refer the complaint to the Department of Justice was 5-0.

NOTE: The Commission authorizes a complaint to be filed when it has "reason to believe" that the law has or is being violated, and it appears to the Commission that a proceeding is in the public interest.

A complaint is not a finding or ruling that the defendants have actually violated the law. The cases will be decided by the courts in which they were filed.

Copies of the complaint, as well as previous documents related to this matter, are available from the FTC's Web site at <http://www.ftc.gov> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them.

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(FTC File No. 971-0116; Consent Order C-3573)



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