

MERGER ANTITRUST LAW

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Georgetown University Law Center
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Tuesdays and Thursdays, 11:10 am – 1:10 pm
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CLASS 4 ASSIGNMENT #2

Instructions

Prepare for Thursday client meeting
Nothing to submit

Assignment

Dr. Jack Smith, the CEO of your client Danek Group, has called you about a possible merger with Sofamor S.A. While the details still need to be worked out and a definitive merger agreement negotiated, the parties have tentatively agreed that the transaction would involve a swap of Sofamor stock for Danek stock valued at \$750 million. The combined company would be renamed the Sofamor Danek Group. After the transaction, current Danek and Sofamor shareholders would hold 70 and 30 percent, respectively, of the combined company.

Danek, Sofamor, and Zimmer Corporation are the only three companies that sell spinal implant products for the surgical treatment of scoliosis in the United States. Danek and Zimmer manufacture their spinal implants in the United States, while Sofamor manufactures its spinal implants in a suburb of Paris, France, and imports its products into the United States. Smith estimates the companies have the following U.S. market shares:

Danek: 40%
Zimmer: 40%
Sofamor: 20%

You have agreed to meet Smith, along with his COO and general counsel, in your office this coming Thursday at 11:10 am to discuss the antitrust implications of the transaction and the process you recommend for develop the defense of the transaction. This is the first strategic deal Danek has done and they are not familiar with U.S. merger antitrust reviews.¹

To help you prepare for this meeting, you have done some preliminary research and found the following:

Scoliosis is a complex spinal deformity characterized by an abnormal lateral curvature of the spine. Adolescent scoliosis refers to the development of an abnormal sideways curvature of the spine during the growth phase of adolescence. It is commonly diagnosed between the ages of 10 to 18, with no known cause for most cases. While there can be congenital and neuromuscular

¹ Danek does not operate outside the United States, so the transaction is only reportable in the United States. Indeed, Danek interest in developing an international operation is the driving force between its desire to merge with Sofamor.

forms of scoliosis, the most common form is idiopathic adolescent scoliosis, where the underlying cause remains unidentified.

In cases of mild adolescent scoliosis, where the curvature is less severe and the progression risk is low, conservative approaches are usually adopted. Close monitoring through regular check-ups and X-rays is crucial to gauge the progression of the condition. Physical therapy, exercises, and bracing can be employed to prevent further curvature progression. Bracing, often utilized during growth spurts, helps to support the spine in an aligned position.

For cases of severe adolescent scoliosis, where the curvature is pronounced and poses potential risks to organ function and quality of life, surgical intervention becomes necessary. The main goals of surgery are to correct the curvature, stabilize the spine, and prevent any further progression. Surgery is typically considered when the curvature exceeds 40-50 degrees and shows signs of continued progression despite non-surgical interventions.

The surgical procedure for severe adolescent scoliosis usually involves the implantation of metal rods and screws to correct and stabilize the curvature. These rods are attached to the spine using screws, hooks, or wires that are anchored to the vertebral bones. The curvature is corrected by maneuvering the spine into a more aligned position and then securing it using these implants. The rods and screws act as internal splints, holding the spine in the corrected position while fusion occurs.

In your research, you found the following YouTube videos helpful:

Understanding Scoliosis

<https://www.youtube.com/watch?v=s3iKfogVUyM>

What is Scoliosis surgery?

https://www.youtube.com/watch?v=Up0cF_Lbm0

***The facts about scoliosis are real.
Do not believe any of the facts about the transaction or the marketplace.***