

MERGER ANTITRUST LAW

LAWJ/G-1469-05
Georgetown University Law Center
Fall 2024

Tuesdays and Thursdays, 3:30 pm – 5:30 pm
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CLASS 4 ASSIGNMENT #2

Instructions

Prepare for Thursday's client meeting
Nothing to submit

Although no written work product is required, give this assignment serious thought. Otherwise, you will be lost in Thursday's class. We will organize the class around it. Be prepared to discuss the merger review process, the problems the deal may have, and your thoughts on how the transaction might be defended.

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 selling spinal implant products for surgical scoliosis treatment 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. Each company has its own differentiated system, and the parts are not interchangeable between systems. 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 3:30 pm to discuss the process the FTC will use to review the transaction, the transaction's antitrust implications, and any views you may have of how to defend 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:

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.

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 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 risk of progression is low, conservative treatment methods are preferred. Regular monitoring through regular check-ups and X-rays is essential to assess the progression of the curvature. Physical therapy, targeted exercises, and bracing may be implemented to prevent further curvature progression. Bracing is particularly effective during growth spurts, as it helps maintain the spine in a more aligned position.

In cases of severe adolescent scoliosis, where the curvature is pronounced and poses potential risks to organ function and quality of life, surgical intervention is necessary to correct the curvature, stabilize the spine, and prevent 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 typically involves implanting metal rods and screws to correct and stabilize the curvature. The surgeon attaches these rods to the spine using screws, hooks, or wires that anchor into the vertebral bones. The surgeon manually adjusts the spine to a more aligned position and then secures the implants to hold the alignment in place. To ensure the spinal alignment remains permanent, the surgeon places bone graft material along and between the treated vertebrae. Over time, this graft material integrates with the patient's natural bone through a biological process known as osteogenesis. This integration solidifies the entire segment into a single, rigid structure, effectively eliminating any movement between the fused vertebrae and securing the spine's new alignment. Proper fusion reduces the stress on the rods and screws, diminishing the risk of hardware failure and ensuring the longevity of the surgical correction.

This type of surgery requires great skill and precision since screws are placed in the spinal vertebrae very near the spinal column and the spinal nerves. As a result, improper execution can puncture the spinal column and lead to severe nerve damage or paralysis. To perform this surgery, orthopedic surgeons require additional specialized training in a spinal surgery fellowship after completing an orthopedic residency. This additional training, which involves hands-on experience under expert supervision, typically lasts several years. Doctors typically are trained on only one of the three systems.

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.***