NOTICE 243 OF 2012

COMPETITION COMMISSION

NOTIFICATION TO CONDITIONALLY APPROVE THE TRANSACTION INVOLVING:

JOHNSON AND JOHNSON

AND

SYNTHES INC

CASE NUMBER: 2011NOV0338

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

The acquiring firm is Johnson & Johnson ("J&J"), a public company listed in the New York Stock Exchange. J&J's activities globally are divided into three business divisions, namely; Consumer, Pharmaceutical and Medical Devices & Diagnostics ("MDD"). MDD is the relevant division for purposes of this transaction. In South Africa, J&J operates through the following entities:

- Jansens Pharmaceuticals (Pty) Ltd
- Johnson & Johnson Medical (Pty) Ltd (Midrand)
- Johnson & Johnson Medical (Pty) Ltd (Retreat)

The orthopaedic medical devices ("OMDs") business is conducted through Johnson & Johnson Medical (Pty) Ltd, which is comprised of four franchises, namely; DePuy, Cordis, Endo Ethicon and Ethicon.

The primary target firm is Synthes Inc. ("Synthes") a firm incorporated in terms of the laws of the United States. Synthes is the ultimate parent company of a global group of companies active in the supply of medical devices used for surgical fixation, correction and regeneration of the human skeleton and its soft tissues. In South Africa, Synthes operates through Synthes (Pty)

Ltd, and has branches in Cape Town, Durban, Bloemfontein, Port Elizabeth, George and East London.
Following this transaction, Synthes will become a wholly owned subsidiary of J&J.
There is a horizontal overlap in the activities of the parties as they are both active in the sale of OMDs. More specifically, trauma devices, spine devices, shoulder replacement devices, cranio-maxillofacial devices ("CMF"), power tools, and bone graft substitutes ("BGS").

Trauma devices are used to treat bone fractures throughout the upper and lower extremities of the body and pelvis. Spine devices are used to correct various conditions of the spine caused by degenerative disorders, trauma, tumours and deformities. While shoulder replacement devices are used to reconstruct shoulder joints, CMF devices are used for the treatment of facial and skull fractures. Power tools are surgical tools such as drill systems, drill bits, reamers and saws and lastly, BGS form part of the orthopaedic biomaterials used in certain trauma, spine, CMF, and joint reconstruction procedures.
These products are mostly supplied by a number of multinationals from facilities located outside South Africa, and imported for distribution locally. Imports account for about 95% of the OMDs supplied locally. The main users of OMDs are the public and private hospitals.

The Commission concluded that the relevant markets for purposes of this transaction are separate markets for each of the six OMD segments and sub-segments. This is because no overlap exists between any two broad categories to warrant them to form part of one market. Furthermore, the products under each segment are generally not substitutable. The geographic boundaries of these markets are also national. This is based on the fact that prices are negotiated between local customers and international manufacturers, through their local representation, at a national level. Also, the assistance provided to surgeons on using the products, which itself is very important on a competitor's product offering, is done by representatives of the companies locally.

Other players (manufacturers) include Biomet SA, Smith & Nephew, Stryker, Zimmer, Medtronic, Southern Implants, Elite Surgical Supplies and Rothmedical. Distributors include Acumed (Affordable Medical), Extremity Medical (MacroMed), ITS (Werkomed), MiOrtho Medical, Sonoma (SilverMed), Trimed (Stratmed), Tournier (BMG), Auckland Orthopaedics, Litha Medical, Marcus Medical, Selective Surgical, Surgitech, (Arthrex) SA BioMedical, PSG Medical and Globus.

The Commission found that barriers to entry in OMDs can be quite high and that this aspect has many facets, including the minimum capital investment required, the marketing of products to surgeons, brand reputation, research and development costs, as well as access to customers for new entrants. There is also proposed legislation by the Department of Health, for possible registration of all medical devices. The implications of such legislation is that some manufacturers and suppliers who currently do not meet the required standards will incur additional costs to comply.

The Commission also found that there is countervailing power from the hospitals, public and private, who are able to negotiate discounts with the suppliers and drive prices down because of their size and their importance to OMD suppliers. The other countervailing power is from the medical aid schemes which limit the amount of reimbursement for specific procedures.

The customers also indicated that although this transaction will result in an increase in market share for J&J, there will still be countervailing forces such as alternative OMD products, medical funders and doctor's discretion in the market.

The Commission also found that one of the important characteristics of the industry is the rapid rate at which innovation takes place. As a result the average shelf life of many OMDs is between 2 and 3 years. Further, the merging parties do not have any product in their portfolio which does not face competition.

Another important factor is the likely impact of this merger on the cost of healthcare. The Commission found that South Africa is among the countries with the highest cost of healthcare and the prices of OMDs are generally among the highest in the world. It is however worth noting that the price of OMDs to public and private hospitals differs. In general, OMDs are cheaper when sold to public hospitals than to private hospitals, and this is unlikely to change post-merger.

The merger also does not result in the removal of an effective competitor as there will remain a significant competitive constrain in the market post-merger from other more effective players.

The OMDs market is also characterised by the presence of a few established suppliers who have distribution infrastructure in South Africa, however there is also a large number of small to medium sized distributors who compete in niche areas in the OMDs market. This is not likely to

be conducive to coordination. With the merger, the level of concentration also does not change drastically as the merging parties supply products, largely in complementary areas.
None of the customers of the merging parties raised concerns about the merger. Some competitors were however concerned that this merger will have an impact on local manufacturers if the merging parties' products were better priced, or products are dumped in the South African market.

In terms of public interest concerns, the merging parties noted that the nature of the functions performed by employees at the businesses relevant to this transaction in South Africa tend to show that it would not be commercially rational for retrenchments to occur.

However, there are anticipated retrenchments and the Commission and the merging parties have agreed to a condition to limit the number of employees that may be affected, as a result of the merger.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.