ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE 154 OF 2017

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

ABBOTT LABORATORIES

AND

ST. JUDE MEDICAL, INC.

CASE NUMBER: 2016SEP0389

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:

1. On 10 August 2016, the Competition Commission (Commission) received a notice of an intermediate merger in terms of which the primary acquiring firm, Abbott Laboratories (Abbott), intends to acquire the entire issued share capital of the primary target firm, St. Jude Medical, Inc. (SJM). As a result of the proposed transaction, Abbott will exercise control over SJM. The proposed transaction is an international transaction also filed with other jurisdictions including BRICS, Japan, the US Federal Trade Commission and the European Commission.

2. Abbott is a company incorporated in accordance with the laws of the United States of America (the US). Abbott is a public company listed on the New York Stock Exchange (NYSE), Chicago Stock Exchange, London Stock Exchange and the SIX Swiss Exchange. It is not controlled by any one entity. In South Africa, Abbott controls Abbott Laboratories South Africa (Pty) Ltd.

3. Abbott is a global health care company which focuses on the research, development, manufacture, and sale of a broad and diversified range of health care products. Abbott has

four primary business segments, namely: nutritional products (including nutritional aids to children and adults); medical devices (which focuses on cardiovascular (such as coronary, endovascular, vessel closure and structural heart devices), optical and diabetes care products); diagnostic products (which focus on in vitro diagnostic tools including blood screening, hematology products); and established pharmaceutical products (which sells branded generic pharmaceuticals in developing markets). Of relevance to the proposed transaction is Abbott's supplies of medical devices in South Africa, in particular the Vessel Closure Devices (VCDs).

4. SJM is a company incorporated in accordance with the laws of the US. SJM is a public company listed on the NYSE and is not controlled by any one entity.

5. SJM is a global medical device company that researches, develops, manufactures, and sells cardiovascular medical devices. SJM has five principal businesses, namely: cardiac rhythm management products (e.g., pacemakers, leads, etc.); cardiovascular products (e.g., mechanical and tissue heart valves, valve repair, VCDs, etc.); heart failure products (including cardiac resynchronization devices, ventricular assist devices, and pulmonary artery pressure monitors); atrial fibrillation products (which assists physicians in diagnosing and treating irregular heart rhythms); and neuromodulation products (which provides neurostimulation therapy to treat chronic pain and movement disorders, etc). Of relevance to the proposed transaction is SJM's VCD medical devices business which falls under its cardiovascular product category.

6. VCDs are mechanical devices inserted into or placed on the hole in the artery and used to close small (around 2.64mm) and large holes. A hole in the patient's blood vessel usually results from certain minimally invasive cardiovascular diagnostic and interventional procedures. Therefore, a hole in the patient's blood vessel must be closed to prevent uncontrolled bleeding. Abbott manufactures and supplies VCDs for both small and large holes whereas SJM is largely focused on small hole VCDs. It is contended that besides these mechanical devices, a hole in the patient's artery can also be closed manually, that is, medical professionals apply direct pressure manually. This method is widely known in the medical profession as 'manual compression'. In simple terms, manual compression is the application

of pressure to the skin above the access site for several minutes until the hole begins to heal naturally. This is usually the case in public hospitals however this method is rarely applied in private hospitals as patients have medical aids. The manual compression also takes longer to administer as opposed to the use of mechanical devices. Further, there are additional complications in the application of manual compression. It is for these reasons that the Commission does not consider manual compression to be substitutable with mechanical devices, i.e., VCDs, and vice versa.

7. The Commission considered the activities of the merging parties and found that the activities of the merging parties overlap horizontally as they are both active in the manufacture and supply of small hole VCDs in South Africa. The Commission concluded on the market for the manufacture and supply of small hole VCDs in South Africa.

8. In South Africa, the Commission found that the VCDs market is very concentrated with only 4 significant players in the small hole vessel closure segment, being Abbott, SJM, Cardinal Health and Cardiva Medical. None of these players manufacture their respective VCDs locally but supply them into South Africa through third party distributors.

9. The merging parties submit that in South Africa the transaction does not raise concerns in the small hole vessel closure market, given: (i) the significant role played by manual compression, which is the gold standard in small hole vessel closure; (ii) the presence of other strong international competitors; and (iii) the fact that market share accretion is low.

10. For reasons explained above, the Commission is of the view that manual compression does not serve as a competitive constraint to the merging parties, especially in the case of private healthcare. Therefore, in considering the market shares for VCDs, the Commission excluded manual compression.

11. The Commission notes that the proposed transaction reduces the number of VCD suppliers in South Africa from four to only three, namely, the merged entity, Cardinal Health and Cardiva Medical.

12. The Commission found that post-merger, the merged entity will have high market shares post-merger with the balance of the market shares held by Cardinal Health and Cardiva Medical. The Commission is concerned that the merged entity is unlikely to be constrained by the other two competitors who holds relatively low market shares. The Commission also calculated the pre- and post-merger HHI levels, and found that there is an increase in HHI levels and the post-merger HHI is indicative of a highly concentrated market.

13. The proposed transaction further enhances the merged entity's market power which can result in price increase on small hole VCDs supplied into South Africa. This will ultimately cause harm to consumers given the already high costs of private medical care.

14. The Commission's investigation also revealed that the barriers to entry in the market for the manufacture and supply of small hole VCDs are likely to be high in particular considering that it involves a great deal of research and development, branding, amongst others. From a distribution level, the Commission found that it may not be easy to distribute these products as skills and training in the specific products is required. Although the Commission found that there was some countervailing power through the role of medical aids who would serve as a constraint if the merging parties were to engage in a price increase strategy, the Commission was nonetheless concerned at the high market shares which would ultimately lead to unilateral effects. As such, the Commission found that the proposed transaction is likely to substantially prevent and lessen competition in the market for the supply of small hole VCDs in South Africa.

15. As a result, the Commission engaged the merging parties on this aspect and requested them to propose remedies that could address the unilateral effects arising from the proposed transaction. The merging parties proposed a divestiture in order to address the Commission's concerns. The Commission understands that a similar divestiture remedy has been tendered in other jurisdictions where the merger has been notified, notably the US (FTC) and the EC. The proposed divestiture entails the divestment of SJM's global VCD business. The Commission is of the view that the proposed divestiture remedy sufficiently addresses the Commission's concerns emanating from the proposed transaction.

16. In addition, the Commission found that the proposed transaction is unlikely to have an impact on third party distributors currently distributing medical devices for the merging parties. In particular, the merging parties submitted that currently, SJM's products, including its VCDs, are distributed by a third party. Similarly, Abbott's VCDs are distributed by a third party. According to the merging parties, there will be no change to this status quo during the divestiture period. Post-transaction, Abbott's VCDs will continue to be distributed by the existing third party distributor. To this end, the Commission contacted the current third party distributors of Abbott and SJM. None of them raised any concerns with the proposed transaction.

17. Furthermore, the Commission finds that the proposed transaction will not have any negative public interest concerns. In particular, there are no job losses emanating from the proposed transaction.

18. Therefore, the Commission approved the proposed transaction subject to conditions set out in **Annexure A** hereto.

ANNEXURE A

ABBOTT LABORATORIES

AND

ST. JUDE MEDICAL, INC.

CASE NO. 2016AUG0389

CONDITIONS

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1. **INTERPRETATION**

1.1 The following terms shall have the meaning assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.1.1 **"Act"** means the Competition Act, No. 89 of 1998 (as amended);

1.1.2 **"Abbott"** means Abbott Laboratories, a company incorporated under the laws of the United States of America with its headquarters in Abbott Park, Illinois, United States of America;

1.1.3 **"Approval Date"** means the date referred to in the Commission's clearance certificate (Form CC15) in relation to the Merger;

1.1.4 **"Closing Date"** means the date in which the Merger has closed globally;

1.1.5 **"Conditions"** mean the conditions as set out in Annexure A ;

1.1.6 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

1.1.7 **"Days"** means business days;

1.1.8 **"Divestiture"** means the sale of the Divestment Business to Terumo and/or to any other Purchaser as the case may be;

1.1.9 **"Divestment Business"** means SJM's global small hole vessel closure device business comprised of its *Angio-Seal*™ and *FemoSeal*™ product lines as agreed with Terumo;

1.1.10 **"Divestiture Period"** means the agreed period from the Closing Date in which Abbott is required to divest the Divestment Business to Terumo or any other Purchaser as the case may be, including the Divestiture Period;

1.1.11 **"Merger"** means the acquisition by Abbott of SJM, as notified to the Commission under case number 2016Aug0389;

1.1.12 **"Merging Parties"** means Abbott and SJM;

1.1.13 **"Purchaser"** means an independent third party to purchase the Divestment Business in the event that Terumo fails to acquire the Divestment Business;

1.1.14 **"SJM"** means St. Jude Medical, Inc. a company incorporated under the laws of the United States of America with its headquarters in St. Paul, Minnesota, United States of America;

1.1.15 **"Terumo"** means Terumo Corporation, a company incorporated under the laws of Japan with its headquarters in Tokyo, Japan;

1.1.16 **"Tribunal"** means the Competition Tribunal of South Africa as established in terms of section 26 of the Act;

1.1.17 **"VCD"** means vessel closure device.

2. **RECORDAL**

2.1 On September 16 2016, Abbott, SJM, and Terumo agreed the terms under which Terumo would acquire the Divestment Business thereby eliminating all overlap between the Parties in South Africa. Terumo is not active in the manufacture or sale of small hole vessel closure devices in South Africa or elsewhere and has the financial resources, experience, and commitment necessary to maintain and grow the Divestment Business. The sale of the Divestment Business to Terumo was publicly announced on October 18, 2016. The Closing Date of the transaction is expected to be at the end of 2016.

3. **COMMITMENT TO DIVEST**

3.1 Abbott shall divest of the Divestment Business within the Divestiture Period to Terumo.

3.2 Should the Divestiture of the Divestment Business to Terumo in the Divestiture Period fail, the Merging Parties shall divest the Divestment Business to the Purchaser as set out below.

3.3 The Merging Parties shall inform the Commission within the agreed timeframe of failure to divest the Divestiture Business to Terumo and set out the steps, including timelines, in relation to the Divestiture of the Divestiture Business to the Purchaser.

4. **SCOPE OF THE DIVESTMENT BUSINESS**

4.1 The Divestment Business includes those assets that contribute to the current operations of, or are necessary for the viability and competitiveness of, the Divestment Business as agreed with Terumo or the Purchaser, whichever is applicable, including:

4.1.1 tangible and intangible assets (including intellectual property rights) of the Divestment Business;

4.1.2 licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business to the extent such licenses, permits and authorizations can be transferred or assigned in accordance with applicable laws; and

4.1.3 contracts of the Divestment Business, to the extent such contracts can be transferred or assigned.

4.2 The Divestment Business will include transitional services agreed with Terumo or the Purchaser whichever is applicable, including IT, finance/accounting, and other applicable support.

5. **THE PURCHASER**

5.1 Subject to 3.2 above, the Purchaser of the Divestment Business shall be independent and not related to the Merging Parties or any directly or indirectly affiliated member of the Merging Parties' corporate groups.

5.2 The Merging Parties shall, in writing, inform the Commission of the proposed Purchaser. Should the proposed acquisition of the Divestiture Business fall within the provisions of section 13A of the Act, the Merging Parties shall file a merger in the prescribed manner. The Commission may request the Merging Parties to provide additional information in relation to the Divestiture Transaction in the event that the Divestiture is not notifiable in terms of the Act.

6. **VARIATION**

6.1 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

7. **MONITORING OF COMPLIANCE**

7.1 The Merging Parties shall inform the Commission of the Closing Date within 5 Days of its occurrence.

7.2 Should Abbott conclude the Divestiture in terms of 3 within the Divestiture Period, the Merging Parties shall inform the Commission in writing within the agreed period and shall inform the Commission of the date on which the Divestiture will be effective. Should the Divesture in the Divestiture Period fail, the Merging Parties shall inform the Commission within the agreed period of the date of this occurrence, including timelines, in relation to the Divestiture of the Divestiture Business to the Purchaser.

All correspondence in relation to these conditions must be submitted to the following email address: mergerconditions@compcom.co.za.

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