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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

In the Matter of	)	
BOSTON SCIENTIFIC CORPORATION, a corporation;	)	
and	)	
GUIDANT CORPORATION, a corporation.	)	**Docket No. C-**

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Boston Scientific Corporation ("BSC"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Guidant Corporation ("Guidant"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. DEFINITIONS

1. "Commission" means the Federal Trade Commission.

2. "BSC" means Boston Scientific, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions,

groups and affiliates controlled by Boston Scientific, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

3. "Guidant" means Guidant Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Guidant Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

4. "Cameron" means Cameron Health, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal place of business located at 905 Calle Amanecer, Suite 300, San Clemente, California 92673.

5. "Coronary Drug Eluting Stent" or "Coronary DES" means a Drug Eluting Stent used in the treatment of coronary artery disease.

6. "Coronary Guidewire" means a thin and flexible wire used in interventional cardiology procedures.

7. "Drug Eluting Stent" or "DES" means a stent that elutes or otherwise delivers one or more drugs or pharmaceutical compositions.

8. "FDA" means the United States Food and Drug Administration.

9. "Implantable Cardioverter Defibrillator" or "ICD" means an implantable device designed to counteract heart arrhythmias and restore normal heart rhythms by applying a brief electric shock.

10. "Percutaneous Transluminal Coronary Angioplasty Balloon Catheter" or "PTCA Balloon Catheter" means a balloon-tipped interventional cardiology catheter that is inserted into a blocked coronary artery and inflated to improve blood flow.

11. "Rapid Exchange," "Rapid Exchange delivery system" or "RX" means intralumenal catheters and stent and embolic protection delivery systems having a guidewire lumen with a proximal guidewire port located substantially remote from the proximal end of the catheter shaft.

12. "Respondents" means BSC and Guidant, individually and collectively.

II. RESPONDENTS

13. Respondent BSC is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business

located at One Boston Scientific Place, Natick, MA 01760. BSC, among other things, is engaged in the research, development, marketing, and sale of interventional cardiology products.

14. Respondent Guidant is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its offices and principal place of business located at 111 Monument Circle, Indianapolis, Indiana 46204. Guidant, among other things, is engaged in the research, development, marketing, and sale of interventional cardiology products and cardiac rhythm products.

15. Respondents are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and are corporations whose business is in or affects commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. PROPOSED ACQUISITION

16. On January 25, 2006, BSC and Guidant entered into an agreement and plan of merger (the "Purchase Agreement") whereby BSC agreed to acquire Guidant in a transaction valued at approximately $27 billion (the "Acquisition").

IV. RELEVANT MARKETS

17. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the research, development, manufacture, and/or sale of the following products:

a. Coronary Drug Eluting Stents;

b. Percutaneous Transluminal Coronary Angioplasty Balloon Catheters;

c. Coronary Guidewires; and

d. Implantable Cardioverter Defibrillators.

18. For the purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce.

VI. STRUCTURE OF THE MARKETS

19. BSC is one of only two companies (the other is Johnson & Johnson) currently selling Coronary DESs in the United States. At least three other companies – including Guidant, Abbott Laboratories, and Medtronic – are involved in the research and development of Coronary DESs and are poised to receive FDA approval to sell Coronary DESs in the United States in the next two to three years.

20. There are only three companies that have access to the intellectual property covering Rapid Exchange versions of Coronary DESs: BSC, Guidant, and Johnson & Johnson. No other company has licenses or other access to the Rapid Exchange patents for Coronary DESs. Currently, over 70 percent of the Coronary DES devices sold in the United States employ the Rapid Exchange delivery system, and the percentage of Coronary DES devices sold on Rapid Exchange delivery systems in the United States is expected to continue to increase rapidly.

21. The U.S. market for PTCA Balloon Catheters is highly concentrated as measured by the Herfindahl-Hirschman Index ("HHI"). BSC and Guidant are two of only four companies that compete in the market for PTCA Balloon Catheters. BSC is the market leader, and together with Guidant, accounts for over 90 percent of the sales of PTCA Balloon Catheters in the U.S. market.

22. The U.S. market for Coronary Guidewires is also highly concentrated. Together BSC and Guidant account for 85 percent of the U.S. Coronary Guidewire market. The other competitors in the United States – J&J, Medtronic, Inc., and Abbott Laboratories – each have only a 5 percent share of the market.

23. Guidant, Medtronic, and St. Jude Medical are the only companies with significant sales of ICDs in the United States. Cameron is involved in the research and development of ICDs and is poised to receive FDA approval to sell its ICD in the United States in the next two to three years.

24. On November 7, 2003, BSC entered into a Securities Purchase Agreement and an Agreement and Plan of Merger ("the Cameron Agreements") with Cameron which provide BSC, among other things, with an option to acquire Cameron. Under the Cameron Agreements, Cameron is obligated to provide BSC with non-public, competitively sensitive information about Cameron's financial and competitive situation and BSC may exert aspects of control over the conduct and business of Cameron.

VII. ENTRY CONDITIONS

25. Developing a Coronary DES, PTCA Balloon Catheter, Coronary Guidewire, or ICD, developing around and/or acquiring licenses to critical intellectual property related to the devices, obtaining FDA approval for the devices, and marketing the devices, takes significantly

longer than two years. Therefore, entry into the relevant lines of commerce described in Paragraph 17 would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition.

VIII. EFFECTS OF THE ACQUISITION

26. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

a. eliminating potential competition between two of only three suppliers of Coronary Drug Eluting Stents with access to a Rapid Exchange delivery system;

b. eliminating actual, direct, and substantial competition between BSC and Guidant in the markets for the research, development, marketing, and sale of PTCA Balloon Catheters and Coronary Guidewires;

c. eliminating actual, direct, and substantial competition between Cameron and Guidant in the market for the research and development of ICDs through BSC's exercise of contractual control and receipt of information rights over Cameron, thereby reducing innovation in this market; and by eliminating potential competition between BSC/Cameron and Guidant in the market for the manufacture and sale of ICDs through BSC's exercise of contractual control and receipt of information rights over Cameron, thereby (a) increasing the likelihood that the combined entity would delay or forego the launch of Cameron's product and (b) increasing the likelihood that the combined entity would delay or eliminate the additional price competition that would have resulted from Cameron's entry into the ICD market;

d. increasing the ability of the merged entity to raise prices unilaterally in the relevant markets; and

e. reducing research and development in the relevant markets.

IX. VIOLATIONS CHARGED

27. The Purchase Agreement described in Paragraph 16 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

28. The Acquisition described in Paragraph 16, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _____ day of _____, 2006, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: