

ACQUISITION BY MEDTRONIC PLC OF CERTAIN ASSETS OF THE ANIMAS CORPORATION BUSINESS

Variation to an Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (CMA) made an initial enforcement order pursuant to section 72(2) of the Act in relation to the acquisition by Medtronic plc (Medtronic) of certain assets of the Animas Corporation business (Animas insulin delivery business) on 15 February 2018 (the Initial Enforcement Order);
- (b) the CMA considers that, based on the evidence it has received in its assessment of the Merger to date, it is appropriate to vary the Initial Enforcement Order because the Animas insulin delivery business has not yet been transferred to Medtronic.

For the purpose of varying the Initial Enforcement Order the CMA hereby makes the following order pursuant to section 72(4)(b) of the Act, addressed to Medtronic, Medtronic Limited (**Medtronic UK**), Johnson & Johnson (**J&J**), and Johnson and Johnson Medical Limited (**J&J UK**) (the Variation Order).

A) The following paragraphs of the Initial Enforcement Order are varied as follows:

Commencement, application and scope

- 2. This Order applies to Medtronic, Medtronic UK, J&J and J&J UK.
- 3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Medtronic, Medtronic UK, J&J or J&J UK to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

Management of the Medtronic/Medtronic UK and the Animas insulin delivery businesses until determination of proceedings

4. Except with the prior written consent of the CMA, Medtronic, Medtronic UK, J&J and J&J UK shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of the Animas insulin delivery business with the Medtronic/Medtronic UK business;
 - (b) transfer the ownership or control of the Medtronic/Medtronic UK business or the Animas insulin delivery business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the Animas insulin delivery business or the Medtronic business to compete independently in any of the markets affected by the transaction.

5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, Medtronic, Medtronic UK, J&J and J&J UK shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) the Animas insulin delivery business is carried on separately from the Medtronic business and the Animas insulin delivery business's separate sales or brand identity is maintained;
 - (b) the Animas insulin delivery business and the Medtronic business are maintained as a going concern and sufficient resources are made available for the development of the Animas insulin delivery business and the Medtronic business, on the basis of their respective pre-merger business plans;
 - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Animas insulin delivery business or the Medtronic business;
 - (d) the nature, description, range and quality of goods and/or services supplied in the UK by each of the two businesses are maintained and preserved;

- (e) except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Animas insulin delivery business and the Medtronic business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Animas insulin delivery business or the Medtronic business are disposed of; and
 - (iii) no interest in the assets of the Animas insulin delivery business or the Medtronic business is created or disposed of;
- (f) there is no integration of the information technology of the Animas or Medtronic businesses, and the software and hardware platforms of the Animas insulin delivery business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Animas insulin delivery business will be carried out by the Animas insulin delivery business alone and for the avoidance of doubt the Medtronic business will not negotiate on behalf of the Animas insulin delivery business (and vice versa) or enter into any joint agreements with the Animas insulin delivery business (and vice versa);
- (h) all existing contracts of the Animas insulin delivery business and the Medtronic business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Animas insulin delivery business or Medtronic business;
- (j) no key staff are transferred between the Animas insulin delivery business and the Medtronic business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Animas insulin delivery business and the Medtronic business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Animas insulin delivery business (or any

of its employees, directors, agents or affiliates) to the Medtronic business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory and/or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

Compliance

6. Medtronic, Medtronic UK, J&J and J&J UK shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
7. Medtronic, Medtronic UK, J&J and J&J UK shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Medtronic, Medtronic UK, J&J and J&J UK and their subsidiaries with this Order. In particular, on 12 March 2018 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Medtronic, Medtronic UK, J&J and J&J UK or other persons of Medtronic, Medtronic UK, J&J and J&J UK as agreed with the CMA shall, on behalf of Medtronic, Medtronic UK, J&J and J&J UK, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
8. At all times, Medtronic, Medtronic UK, J&J and J&J UK shall actively keep the CMA informed of any material developments relating to the Animas insulin delivery business or the Medtronic business, which includes but is not limited to:
 - (a) details of key staff who leave or join the Animas insulin delivery business or the Medtronic business;
 - (b) any interruption of the Animas or Medtronic business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;

(c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Animas or Medtronic business including any substantial changes in customers' demand; and

(d) substantial changes in the Animas or Medtronic business's contractual arrangements or relationships with key suppliers.

9. If Medtronic, Medtronic UK, J&J or J&J UK have any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Medtronic, Medtronic UK, J&J and/or J&J UK may be directed to appoint under paragraph 10.

11. Medtronic, Medtronic UK, J&J and J&J UK shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

B) The definitions of the Initial Enforcement Order are varied to include:

'**J&J**' means Johnson & Johnson, a company registered in New Jersey, USA – central index key number 0000200406;

'**J&J UK**' means Johnson and Johnson Medical Limited, company registered in the United Kingdom – company number 132162.

Signature:

Maria Duarte, Assistant Director, Mergers