

ANTICIPATED ACQUISITION BY STRYKER CORPORATION OF WRIGHT MEDICAL GROUP N.V.

Summary of the CMA's decision on relevant merger situation and substantial lessening of competition

ME/6870/19

SUMMARY

1. On 4 November 2019, Stryker Corporation (**Stryker**) agreed to acquire, through its wholly owned subsidiary, Stryker B.V., all of the outstanding ordinary shares of Wright Medical Group N.V. (**Wright**) (the **Merger**). Stryker and Wright are together referred to as the **Parties** and, for statements referring to the future, as the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Stryker and Wright is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. Stryker and Wright are both globally active suppliers of medical devices. The Parties overlap in the supply of several types of orthopaedic medical devices in the UK, including total ankle replacement prostheses products, which comprises the primary area of overlap between the Parties in the UK. Total ankle replacement prostheses refer to prosthetic components used in elective surgical procedures to treat arthritis by replacing the damaged articular surfaces of the human ankle joint. The CMA assessed the impact of the Merger on the supply of total ankle replacement prostheses products in the UK.
4. On 12 June 2020, the Parties indicated that they believed that the test for reference was met on the basis that the Merger raises a realistic prospect of a substantial lessening of competition (**SLC**) arising from horizontal unilateral effects in the supply of total ankle replacement prostheses products in the UK. The Parties requested that the CMA accelerate the Phase 1 timetable and reach a decision on the SLC ahead of the CMA's statutory deadline for

issuing its Phase 1 decision. As part of their request, the Parties waived their procedural rights at Phase 1 (including their right to an issues meeting and for the case to be discussed at a case review meeting).

5. The CMA has concluded that it has evidence objectively justifying its belief that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of total ankle replacement prostheses products in the UK, thereby justifying its acceleration of a Phase 1 decision. The Parties have an extremely high combined share of supply of [90-100]% by revenue in the supply of total ankle replacement prostheses products in the UK, with a significant increment of [10-20]% arising as a result of the Merger. Wright is by far the largest firm in the market, having a share of supply of [70-80]%, and the Merger will remove its only sizeable competitor in the UK with a share of above 10%.
6. The CMA found there is a high degree of competitive interaction between the Parties, as evidenced by third party views, and that the Merger will remove the only sizeable constraint on Wright in an already highly concentrated market and eliminate a significant competitive force in Stryker. As noted above, the CMA found that the Merged Entity would face no other significant competitors post-Merger; its next largest competitor, Corin, would have a significantly smaller share of only [5-10]% and all remaining competitors would have shares of less than [0-5]%. This is consistent with the feedback received from third parties on the Merger. The CMA therefore found that other competitors posed only a weak competitive constraint, both individually and in aggregate. The CMA also found that entry and/or expansion would not be sufficiently timely, likely and sufficient to offset the effects of the Merger on competition.
7. The CMA also assessed whether the Merger may give rise to competition concerns as a result of horizontal unilateral effects arising from the supply in the UK of: (i) finger joints arthroplasty products; (ii) foot plating products; (iii) hammertoe arthrodesis products; and (iv) synthetic bone graft substitutes. In light of the Parties' moderate market position and the competitive constraint from other suppliers that the Merged Entity will continue to face in these markets, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC in any of these markets.
8. The CMA also assessed whether the Merger leads to horizontal unilateral effects from a loss of potential competition in the supply of shoulder implants in the UK by reference to: (i) whether Stryker would be likely to enter the market in the absence of the Merger; and (ii) whether this would lead to greater competition. However, the CMA did not find a realistic prospect that

the Merger would give rise to an SLC on this basis as even if Stryker did enter the market, the Merged Entity would continue to be constrained by several strong competitors.

9. The CMA therefore believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC as a result of horizontal unilateral effects in the supply of total ankle replacement prostheses products in the UK.
10. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). Stryker has until 7 July 2020 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.