

arms"). Mobile C-arms typically consist of two wheeled units, one to support the C-arm unit and the other to support the display monitors and imaging processor. The C-arm unit consists of a curved arm with an x-ray tube mounted on one end and an image intensifier, which converts the x-rays into a viewable image, on the other end. Orthopedic-vascular C-arms are mobile C-arms designed for general surgery, orthopedic, pain management, or basic vascular procedures. These procedures include, but are not limited to, placing splints, localized needle biopsy, endoscopy, colonoscopy, and basic vascular procedures, such as balloon angiography and endovascular stent graphs.

A hospital or other healthcare facility seeking to purchase an orthopedic-vascular C-arm would not consider any other imaging equipment, such as a fixed C-arm, mini C-arm, CT scanner, or other x-ray equipment, to be a realistic substitute. Fixed C-arms are dedicated to a specific room, are generally used for cardiac procedures, and cost significantly more than any mobile C-arm. Mini C-arms cannot image an entire torso and are limited in the medical procedures in which they can be used. CT scanners and other x-ray equipment do not have the functionality to provide real-time, continuous viewing during medical procedures.

Another type of mobile C-arm is designed for advanced vascular and cardiac procedures. These mobile C-arms are designed to image a beating heart or the brain. To produce a good image, these mobile C-arms are equipped with greater hardware and functionality and are therefore priced at much higher levels than orthopedic-vascular C-arms. A hospital or other healthcare facility seeking to purchase an orthopedic-vascular C-arm would not consider a mobile C-arm designed for advanced vascular and cardiac procedures to be a realistic substitute. A small but significant increase in the price of an orthopedic-vascular C-arm would not cause a sufficient number of hospitals or other healthcare facilities seeking to purchase orthopedic-vascular C-arms to switch to any alternative products so as to make such a price increase unprofitable and unsustainable.

The Complaint alleges that the relevant geographic market for the sale of orthopedic-vascular C-arms is the United States. Any company seeking to sell an orthopedic-vascular C-arm in the United States must register with the FDA and receive approval for its products. To be competitive, an orthopedic-vascular C-arm supplier must also establish local distribution,

service, and support networks. Thus, in the face of a small but significant increase in the price of orthopedic-vascular C-arms, purchasers in the United States cannot turn to any producer of orthopedic-vascular C-arms that has not received FDA approval for its products, and are unlikely to turn in substantial numbers to providers that have not established a sales and service presence in the United States.

b. *Harm to Competition as a Consequence of the Acquisition.* The market for orthopedic-vascular C-arms is highly concentrated. GE dominates the sale of orthopedic-vascular C-arms, with approximately 68 percent of unit sales. Instrumentarium and two other firms have smaller market shares. The market for orthopedic-vascular C-arms would become even more concentrated if GE acquired Instrumentarium.

Orthopedic-vascular C-arms are differentiated on the basis of image quality, ease of use, weight and size, firm reputation, and service. Customers negotiate transactions individually with one or more vendors and have distinct and ranging preferences for certain products and vendors. The Complaint alleges that Instrumentarium provides GE with significant competition in the development, manufacture, and sale of orthopedic-vascular C-arms. This has included competition on price, service, innovation, and product features, such as image quality. A significant number of customers view the GE and Instrumentarium orthopedic-vascular C-arm products as close substitutes, and do not view the products of other vendors to be equally close. During individual negotiations, these customers have benefited from the competition between GE and Instrumentarium to obtain lower prices, improved product quality and services, and better contract terms. The proposed transaction would eliminate the competition between GE and Instrumentarium, remove one of the few vendors providing competition to GE in orthopedic-vascular C-arm sales, and substantially increase the likelihood that GE will unilaterally increase the price of orthopedic-vascular C-arms to a significant number of customers.

If GE acquires Instrumentarium, there is unlikely to be timely entry by any firm that would be sufficient to defeat an anticompetitive price increase or reduction in product quality. Successful entry and expansion is difficult, time-consuming, and costly for several reasons. First, to sell an orthopedic-vascular C-arm to a customer in the United States, a firm must gain FDA approval. The product development and approval process is costly and time-consuming. Second, a vendor's

reputation and name recognition are extremely important factors in effectively selling orthopedic-vascular C-arms; hospitals and healthcare facilities seek to purchase products with proven records of reliability, in no small part because mobile C-arms are used during important medical procedures, and a mobile C-arm's poor performance is costly and can endanger a patient's life or physical condition.

Third, because hospitals and other healthcare facilities rely on visits from sales representatives to learn about new products and technologies, and often rely on vendors for product service, a prospective supplier of orthopedic-vascular C-arms would have to establish sales, distribution, and service networks. Fourth, it takes substantial time and resources to develop the expertise necessary to successfully produce and market orthopedic-vascular C-arms. Suppliers must also maintain significant ongoing research and develop efforts to continue innovations that meet customer demand as well as stringent safety standards to ensure future sales.

II. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of GE's proposed acquisition of Instrumentarium in the critical care monitor and orthopedic-vascular C-arm markets by establishing a new, independent, economically viable competitor in each of those markets.

The proposed Final Judgment orders the defendants to divest the Spacelabs and Ziehm businesses to acquirers acceptable to the United States, in its sole discretion. The defendants must complete the required divestitures within one hundred twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later. The United States, in its sole discretion, may agree to an extension of this time period of up to two, thirty (30) days periods, not to exceed sixty (60) calendar days in total.

Because GE and Instrumentarium have significant operations in Europe as well as the United States, the European Commission also reviewed GE's proposed acquisition of Instrumentarium. To obtain regulatory approval in Europe, GE entered into Commitments that, among other things, required it to sell its Spacelabs patient monitor business. These Commitments, approved by the European Commission on September 2, 2003 ("the EC