

Commitments”), included a detailed description of the Spacelab business.

The proposed Final Judgment adopts this detailed description as the definition of the Spacelabs business to be divested and attaches the description as Exhibit 1 to the proposed Final Judgment. Because this detailed description includes highly confidential information, such as customer lists and supply agreements, it was filed under seal. A nonconfidential version of the description was filed as Exhibit 2 to the proposed Final Judgment. There is, however, one addition to the description of the Spacelabs business to be divested. The proposed Final Judgment also provides that the acquirer of the Spacelabs business shall grant GE a limited license to certain technology to be divested, so that Instrumentarium can continue to use this technology in its connectors for patient monitoring equipment. The terms and duration of such license are to be negotiated between GE and the acquirer of the Spacelabs business. The proposed Final Judgment does not require GE to divest Datex-Ohmeda, another Instrumentarium business unit that manufactures and sells patient monitors, because that unit predominately sells patient monitors other than critical care monitors.

If the defendants have not divested the Spacelabs business within the required time period, the Court, upon application of the United States, is to appoint a trustee to complete the divestiture. Because the Commitments entered into in Europe also require selection of a trustee if GE does not complete the divestitures within a certain time, the proposed Final Judgment provides that the United States shall select a trustee, to be approved by the Court, after good-faith consultation with the European Commission to ensure selection of a trustee acceptable to both the United States and the European Commission. The proposed Final Judgment provides that the defendants will pay all costs and expenses of the trustee. After the trustee's appointment becomes effective, the trustee will file monthly reports with the United States and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the plaintiff will have the opportunity to make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment by a period requested by the United States.

The proposed Final Judgment defines the Ziehm business to be divested as Instrumentarium's C-arm business and its line of C-arm products, currently conducted through two subsidiaries: Instrumentarium Imaging Ziehm, Inc. and Instrumentarium Imaging Ziehm GmbH. The business to be divested includes, with a few limited exceptions, all tangible and intangible assets used in Instrumentarium's C-arm business. These assets include two physical facilities (located in Riverside, California and Nuremberg, Germany), all contracts and agreements, and all intellectual property, except the use of the name “Instrumentarium.” The proposed Final Judgment has a separate provision with regard to an Instrumentarium 3D-imaging research and development project that was conducted for Instrumentarium's other imaging businesses, as well as for its C-arm business. This ongoing 3D project is not part of the divestiture package, but the proposed Final Judgment requires the defendants to (1) maintain the project; (2) continue it for up to one year on a joint basis with the acquirer of Ziehm; and (3) grant the acquirer of Ziehm a perpetual, assignable, royalty-free nonexclusive license, limited to the field of use of C-arms, to the intellectual property relating to 3D-imaging developed in the project during that period.

If the defendants have not divested the Ziehm business within the required time period, the Court, upon application of the United States, is to appoint a trustee selected by the United States and approved by the Court to complete the divestiture. The proposed Final Judgment provides that the defendants will pay all costs and expenses of the trustee. After the trustee's appointment becomes effective, the trustee will file monthly reports with the United States and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the plaintiff will have the opportunity to make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment by a period requested by the United States.

The proposed Final Judgment takes steps to ensure that the acquirers of both the SpaceLabs and Ziehm businesses can and will be able to use these operations as viable, ongoing businesses in the manufacture and sale of critical care monitors and orthopedic-vascular C-arms, respectively, in the United States. The United States, in its sole

discretion, must be satisfied that both the Spacelabs and Ziehm acquirers have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the manufacture and sale of critical care monitors and orthopedic-vascular C-arms, respectively, in the United States.

The proposed Final Judgment is thus designed to maintain the present level of competition in both the critical care monitor and orthopedic-vascular C-arm markets by replacing the competitor eliminated in each of these markets as a result of the acquisition with equally viable and effective competitors. It accomplishes this goal by, among other things: (1) Requiring prompt divestitures so that the viability of the Spacelabs and Ziehm businesses is not harmed by an unreasonable delay in accomplishing those divestitures; (2) requiring divestitures of the tangible and intangible assets that make up each of the divested businesses so that the acquirers have the assets needed to make Spacelabs and Ziehm viable, competitive businesses; and (3) ensuring that the acquirers of Spacelabs and Ziehm have the intent and capability of competing effectively in the manufacture and sale of critical care monitors and orthopedic-vascular C-arms, respectively, in the United States.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in a federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent lawsuit that any private party may bring against the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Tunney Act, provided that the United States has not withdrawn its consent. The Tunney Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.