

FTC starts Zimmer/Biomet inquisition



[Elizabeth Cairns](#)

As predicted, Zimmer's \$13bn acquisition of the extremely similar Biomet has run into antitrust difficulties. The US Federal Trade Commission has asked both companies for more information, delaying the closing of the deal. Exactly what information the FTC has demanded remains unknown, but the requirements could be onerous.

The tie-up was already on hiatus in Europe. The European Commission paused its review of the acquisition on June 11, saying that the notification it had received was incomplete. Zimmer and Biomet may have factored this kind of regulatory delay into their plans – they still insist that the deal is still going to close in the first quarter. But it is worth considering what kinds of divestitures the companies may be required to make (see table).

Remedy

Zimmer sought EU clearance for the transaction on June 3, and the Commission said it would decide by July 9. This is now on indefinite hold; when the companies submit their new information the Commission will give a new date.

The situation in the US appears to be as serious or worse. The FTC has submitted a so-called second request – the initial information submitted on the deal's announcement is considered the first request – which kick-starts a more intensive investigation. The second request obliges the parties to produce an enormous amount of information, according to analysts at Bank of America.

This could include marketing and strategic plans, order forms and win/loss plans, inter alia. Executives from Zimmer and Biomet will have to testify to the FTC, but the hospitals the companies sell to and their competitors could also receive subpoenas demanding data or testimony.

It can take four or five months to comply with a second request and the deal cannot close until one month thereafter, to allow the FTC to review the material. After that the agency can block the deal, approve it, or allow it with conditions. The companies can appeal the decision, but this is rarely successful.

Second requests are scarce, occurring in around 4% of deals, BoA analysts wrote. However, of those mergers that do elicit such a request, only a quarter are approved without "some sort of remedy".

Divestitures, then. While the two companies are both active in the dental, spinal and trauma segments, by far the biggest overlap comes in their hip and knee replacement product lines (see table below). Between them they have 36% of today's hip market and 42% of global knee sales, *EvaluateMedTech* data show. Though these proportions are forecast to shrink slightly by 2020 thanks to faster growth by other players, neither the FTC nor the European Commission are likely to permit such dominance.

Nuance

To do Zimmer and Biomet justice, even within the hips and knee segments their devices treat different patients with a variety of complaints. And with the orthopaedics sector already heavily consolidated, it is hard to know who would be in a position to buy.

Analysts at Bernstein point out that the FTC will take a nuanced view. Biomet dominates the partial knee market and is particularly strong in revision surgery – repair or replacement of an initial implant – while Zimmer's strength is in total knees and first-time surgery. If the authorities take the view that these are serving different populations, it is possible that ZimMet will be allowed to keep both.

The analysts add that the partial knee market is more concentrated than the total knee space, so it is possible that one of the divestments required for the green light could be Zimmer's partial knee franchise.

As similar as the companies are, any divestitures required are unlikely to be too significant. The even larger – \$20bn – transaction in which Johnson & Johnson bought Synthes only necessitated the larger company to ditch its trauma products for a measly \$280m. The next few months will be busy and perhaps even stressful for Zimmer and its intended partner, but they probably do not have too much to fear.

Mirror image: Zimmer and Biomet's similarities

Company	EvaluateMedTech device classification - L3	Number of devices in segment	WW annual sales (\$m)		Market share	
			2013	2020	2013	2020
Zimmer	Dental	32	239	275	1.9%	1.5%
Biomet	Dental	53	257	257	2.0%	1.4%
Zimmer	Knee replacement	34	1,910	2,499	28.0%	28.1%
Biomet	Knee replacement	39	961	1,213	14.1%	13.7%
Zimmer	Hip replacement	53	1,331	1,602	24.2%	23.0%
Biomet	Hip replacement	100	654	811	11.9%	11.7%
Zimmer	Trauma fixation	74	316	437	4.6%	4.4%
Biomet	Trauma fixation	189	654	1,032	9.5%	10.5%
Zimmer	Spinal devices	72	202	205	2.8%	2.2%
Biomet	Spinal devices	111	279	288	3.9%	3.1%

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