



## **DETERMINATION OF MERGER NOTIFICATION M/13/024 - KCI/Systagenix**

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### **Section 21 of the Competition Act 2002**

**Proposed acquisition by Kinetic Concepts Inc. of sole control of Systagenix Wound Management (US) Inc. and Systagenix Wound Management Mezz B.V.**

**Dated 19 September 2013**

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### **Introduction**

1. On 23 August 2013, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed acquisition whereby Kinetic Concepts, Inc. ("KCI"), a portfolio company of Apax Partners LLP ("Apax"), would acquire sole control of Systagenix Wound Management (US) Inc. and Systagenix Wound Management Mezz B.V. (together "Systagenix").

### **The Undertakings Involved**

#### ***Apax***

2. Apax is a limited liability partnership in the United Kingdom and the parent of a number of companies which provide investment advisory services to private equity funds investing in a range of industry sectors primarily in Europe. Apax is not controlled by any single individual or entity. Directly or indirectly, Apax acts as the lead investment advisor for private equity funds, and exercises decisive influence over equity investments made by such funds.
3. In addition to KCI, Apax controls the following portfolio companies which are active in the State:
  - New Look Group, a retailer of fashion apparel;
  - ALM, a publisher serving the legal industry;
  - Top Right Group, a provider of media services;
  - Epicor, a provider of business software;
  - iGate, a provider of IT and business process outsourcing services; and
  - Trader Media, automotive classified advertising through magazines and online.

4. With the exception of KCI, none of Apax's portfolio companies are active in the production or sale of wound care products anywhere in the world.
5. For the year ending 31 December 2012, Apax's worldwide turnover was €[...]. Apax's turnover in the State for the same period was €[...].

### **KCI**

6. KCI is based in the United States and active in twenty-five countries worldwide including in the State. It is active in the development, manufacture and sale of high-technology therapies and products for wound care and tissue regeneration.
7. KCI's core activity is in the active wound care industry with the development, manufacture and sale of advanced wound care devices that apply negative pressure (i.e., vacuum pressure) in order to heal wounds. These devices are typically referred to as negative pressure wound therapy ("NPWT") products. NPWT products are used to treat two types of wounds: acute wounds and chronic wounds. With regard to acute wounds (i.e., wounds that heal in 3 to 4 weeks), NPWT products are primarily used for burns and open trauma wounds (e.g., a bone fracture in which the skin is broken). With regard to chronic wounds (i.e., non-healing wounds), NPWT products are used to treat wounds such as diabetic foot ulcers, pressure ulcers, and venous leg ulcers.
8. NPWT products consist of (a) NPWT equipment and (b) NPWT disposables. The former consists of a suction pump which enables the application of negative pressure around the wound, and a replaceable collection canister which is used to collect infectious materials or exudates from the wound surface during the pumping action. NPWT disposables consist of either foam or gauze dressing to be placed in the wound and an adhesive film drape for sealing the wound. They also include a drainage tube running from the wound through the dressing in order to remove exudates from the wound.
9. KCI also sells regenerative acellular tissue matrices for repair or replacement of damaged or inadequate integumental tissue, such as diabetic foot ulcers, venous leg ulcers, and pressure ulcers. KCI does not, however, sell any tissue matrices in the State.
10. KCI does not manufacture or sell moist wound care products (see discussion below) anywhere in the world. Furthermore, KCI does not provide contract manufacturing or sterilization services anywhere in the world.
11. For the year ending 31 December 2012, KCI's worldwide turnover was approximately €1 billion. KCI's turnover in the State for the same period was €[...].

### **Systagenix**

12. Systagenix, owned by One Equity Partners, is active worldwide including in the State in the development, manufacture and sale of advanced wound care products, in particular moist wound care products. Systagenix does not manufacture or sell active wound care

products such as NPWT products or tissue matrices anywhere in the world.

13. Systagenix is currently also active in wound diagnostics, including general wound care (e.g., surgical sponges, dressings, and bandages). However, Systagenix will be restructured prior to implementation of the proposed transaction so that its diagnostic business is not part of the proposed transaction.
14. Systagenix also provides contract manufacturing (e.g., Cidrex, a disinfectant used to sterilize medical instruments on behalf of Johnson & Johnson) and sterilisation services to other healthcare manufacturers. Systagenix does not, however, provide contract manufacturing and sterilisation services in the State.
15. For the year ending 31 December 2012, Systagenix's worldwide turnover was approximately €[...]. Systagenix's turnover in the State for the same period was €[...].

### **Rationale for the Proposed Acquisition**

16. The parties state in the notification:

"Systagenix is active in the moist wound care segment, while KCI is not. KCI believes that the Transaction provides it with the opportunity to expand and diversify its advanced wound care products offering."

### **Third Party Submissions**

17. No submission was received.

### **Competitive Analysis**

18. There may be a horizontal overlap between the parties as both are active in the sale of advanced wound care products in the State. As noted above, however, KCI only sells active wound care products while Systagenix only sells moist wound care products in the State.
19. The European Commission has addressed wound care product market definitions in several decisions. In its 2008 decision in Case COMP/M.5190 - Nordic Capital/ConvaTec, the European Commission examined a merger between parties "active in the supply of moist advanced wound care products", and left open whether the market included "all moist advanced wound care products" or only some of them<sup>1</sup>. The Commission stated the following in relation to advanced wound care products:

"In previous investigations, the Commission has subdivided wound care products into two categories i.e., traditional wound care products and advanced wound care products. The Commission considered that the latter could be further subdivided into i) moist wound care products, ii) active wound

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<sup>1</sup> Case No. COMP/M.5190 – Nordic Capital/Convatec [2008], paras 11 & 34.

care products and iii) biological active wound care products. ... The common functionality of moist advanced wound care products that differentiates them from other advanced wound care products is that they provide a moist environment that can be beneficial for healing."<sup>2</sup>

20. In its 2005 decision in Case COMP/M.3816 - Apax/Mölnlycke, the European Commission reviewed a number of factors and concluded that "moist wound care products, active wound care products, biologically active each belong to separate relevant product markets"<sup>3</sup> It left open "the question of whether each moist wound care product family constitutes a relevant product market".<sup>4</sup>
21. A year later the Commission, while noting that it had previously considered that advanced wound care products can be subdivided into those three segments (moist, active and biologically active), observed that it had "only defined the product market for moist wound care products, whereas it left open whether active wound care products and biologically active wound care products would constitute separate product markets".<sup>5</sup> The majority of respondents regarded the three segments as separate, but some considered moist wound care and active wound care part of a single market. The Commission wrote that "for the purpose of this case it can be left open whether active wound care products and biologically active wound care products constitute separate product markets", since competition was not impeded regardless of that decision.
22. Similarly, it is not necessary for the Authority to reach a definite view on the precise relevant product market. The Authority's conclusions concerning the competitive impact of the proposed transaction, outlined below, would be unaffected whether the relevant product market(s) are narrow (e.g., the supply of moist wound care products and the supply of active wound care products) or broader to encompass the supply of all types of advanced wound care products including moist wound care products and active wound care products.
23. In order to ascertain the views of customers who purchase advanced wound care products, the Authority contacted several of the leading customers in the State, including customers accounting for approximately 90% of Systagenix's total sales in the State in 2012.
24. No customer expressed any competition concerns about the proposed transaction. Two of the customers contacted by the Authority are full-line pharmaceutical wholesalers active in the State. Neither had any concerns. Furthermore, both customers stated that there are a number of alternative suppliers of wound care dressings active in the State such as Mölnlycke, Smith & Nephew, and ConvaTec.
25. One of the customers contacted by the Authority is a hospital that purchases wound care dressings such as sterile and non-sterile swabs

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<sup>2</sup> Ibid, para 12 [footnote omitted].

<sup>3</sup> Case No COMP/M.3816 – Apax / Mölnlycke [2005], para 22.

<sup>4</sup> Ibid, para 24.

<sup>5</sup> Case No COMP/M.4229 – APhL / L&R / Netcare / General Healthcare Group [2006], para 30.

from Systagenix. This customer informed the Authority that it also rents NPWT machines from KCI.<sup>6</sup> This customer expressed the view that the proposed transaction raises no competition concerns because the wound care products sold by Systagenix and KCI are not substitutable and therefore the parties are not competitors. This customer stated that NPWT machines are a very different method of treating a wound in comparison to the wound care products sold by Systagenix.

26. One of the customers contacted by the Authority is the Health Service Executive ("HSE"). The HSE informed the Authority that it purchases moist wound care products from Systagenix and NPWT machines from KCI. The HSE expressed no competition concerns stating that there are a large number of suppliers active in the State who compete in the supply of wound care products. The HSE described Systagenix and KCI as being active in separate product categories in the State.
27. In light of the above, the Authority considers that the proposed transaction will not raise any competition concerns in the State.

### **Ancillary Restraints**

28. The agreement between the parties includes a non-compete clause and a non-solicitation clause that are limited to a period of three years or less.
29. The Authority considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

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<sup>6</sup> This customer stated that it is not unusual for a hospital to rent NPWT machines as opposed to purchasing the machines.

## **DETERMINATION**

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition whereby Kinetic Concepts, Inc., a portfolio company of Apax Partners LLP, would acquire sole control of Systagenix Wound Management (US) Inc. and Systagenix Wound Management Mezz B.V. will not be to substantially lessen competition in markets for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

**For the Competition Authority**

**Stephen Calkins**

**Member of the Competition Authority**

**Director, Mergers Division**