

IN THE MATTER OF
MEDTRONIC, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3842. Complaint, Dec. 21, 1998--Decision, Dec. 21, 1998

This consent order allows Medtronic, Inc., a Minnesota-based corporation that manufactures and sells medical devices, to acquire Physio-Control International Corporation's automated external defibrillator business, and requires, among other things, that Medtronic limit its interest in SurVivaLink to that of a passive investor, and prohibits Medtronic from naming a member to SurVivaLink's Board of Directors.

Participants

For the Commission: *Norman Armstrong, Jr., Andrew J. Topps, Ann Malester, William Baer, Bart Wilson, and Jonathan Baker.*

For the respondent: *Philip Larson, Hogan & Hartson, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Medtronic, Inc. ("Medtronic"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the voting stock of Physio-Control International Corporation ("Physio-Control"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

1. "*Automated External Defibrillators*" means portable, automated devices used in emergency situations by persons with limited or no medical training to diagnose and treat persons suffering from sudden cardiac arrest.

2. "*SurVivaLink*" means SurVivaLink Corporation, a Minnesota corporation, with its principal place of business located at 5420 Feltl Road, Minnetonka, Minnesota. SurVivaLink is engaged in, among other things, the research, development, manufacture and sale of Automated External Defibrillators.

3. "*Investment Agreements*" means the Investment Agreement, dated April 29, 1994, by and among SurVivaLink Corporation, Medtronic, Inc. and the following shareholders of SurVivaLink: Bryon L. Gilman, Karl J.F. Kroll, Kenneth C. Maki, and Mark W. Kroll; and the Investment Agreement dated October 31, 1996, by and among SurVivaLink Corporation and Medtronic, Inc.

4. "*Respondent*" means Medtronic.

II. RESPONDENT

5. Respondent Medtronic is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Minnesota, with its principal place of business located at 7000 Central Avenue, Northwest, Minneapolis, Minnesota. Respondent is engaged in, among other things, the research, development, manufacture and sale of a wide-range of medical devices.

6. Through the Investment Agreements, respondent owns below ten (10) percent of the overall securities in SurVivaLink, and possesses a number of rights, including but not limited to: (a) the right to receive competitively sensitive non-public information relating to SurVivaLink; (b) the right to appoint one member to SurVivaLink's Board of Directors; and (c) the right to vote on all matters requiring a shareholder vote.

7. Respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE ACQUIRED COMPANY

8. Physio-Control is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Washington, with its principal place of business located at 11811 Willows Road, N.E., Redmond, Washington. Physio-Control is engaged in, among

other things, the research, development, manufacture and sale of Automated External Defibrillators.

9. Physio-Control is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION

10. On June 27, 1998, Medtronic entered into an Agreement and Plan of Merger with Physio-Control to acquire all of the voting stock of Physio-Control in exchange for Medtronic voting stock valued at \$530 million.

V. THE RELEVANT MARKET

11. For purposes of this complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the research, development, manufacture and sale of Automated External Defibrillators.

12. For purposes of this complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

VI. STRUCTURE OF THE MARKET

13. The market for the research, development, manufacture and sale of Automated External Defibrillators is highly concentrated as measured by the Herfindahl-Hirschman Index ("HHI"). SurVivaLink and Physio-Control are two of only three significant suppliers of Automated External Defibrillators in the United States.

14. Medtronic, through its ownership interest in SurVivaLink, and Physio-Control are actual, direct competitors in the relevant market for the research, development, manufacture and sale of Automated External Defibrillators in the United States.

VII. BARRIERS TO ENTRY

15. Entry into the market for the research, development, manufacture and sale of Automated External Defibrillators is unlikely and would not occur in a timely manner to deter or counteract the adverse competitive effects described in paragraph sixteen, because of, among other things, the time and expense required to design and

develop a competitively viable product, obtain approvals from the United States Food and Drug Administration necessary to manufacture and sell Automated External Defibrillators in the United States, and establish a sales and distribution network.

VIII. EFFECTS OF THE ACQUISITION

16. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the following ways, among others:

A. By eliminating actual, direct and substantial competition between respondent, through SurVivaLink, and Physio-Control in the relevant market;

B. By increasing the likelihood of collusion or coordinated interaction among the firms in the relevant market;

C. By increasing the likelihood that customers of Automated External Defibrillators would be forced to pay higher prices; and

D. By reducing innovation in the relevant market.

IX. VIOLATIONS CHARGED

17. The Acquisition agreement described in paragraph ten constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

18. The Acquisition described in paragraph ten, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent of Physio-Control International Corporation ("Physio-Control") and the respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as

amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Medtronic, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the state of Minnesota, with its office and principal place of business located at 7000 Central Avenue, Northwest, Minneapolis, Minnesota.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Medtronic*" or "*respondent*" means Medtronic, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Medtronic, Inc, not including SurVivaLink Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "*SurVivaLink*" means SurVivaLink Corporation, a corporation organized, existing and doing business under the laws of Minnesota with its headquarters located at 5420 Feltl Road, Minnetonka, Minnesota, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by SurVivaLink Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "*Physio-Control*" means Physio-Control International Corporation, a corporation organized, existing and doing business under the laws of Washington with its headquarters located at 11811 Willows Road, N.E., Redmond, Washington, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Physio-Control International Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

D. "*Commission*" means the Federal Trade Commission.

E. "*Ownership Interest*" means any right(s), present or contingent, to hold voting or nonvoting interest(s), equity interest(s), and/or beneficial ownership(s) in the capital stock of SurVivaLink.

F. "*Voting Agreements*" means the Agreement Regarding The Election of Director by and among SurVivaLink Corporation, the purchasers of the Company's Series A Convertible Preferred Stock and the persons named in Appendix B of that agreement ("the Shareholders") and the Agreement Regarding Election of Directors made on June 12, 1997, by and among SurVivaLink and its stockholders.

G. "*The Rights of First Refusal Agreement*" means the Rights of First Refusal Agreement signed by Medtronic, Inc. on May 8, 1997.

H. "*Contractual Agreements*" means the following agreements: the Investment Agreement made and entered into as of April 29, 1994, by and among SurVivaLink Corporation and Medtronic and the following shareholders of SurVivaLink: Byron L. Gilman, Karl J.F. Kroll, Kenneth C. Maki, and Mark W. Kroll; the Investment Agreement made and entered into as of October 31, 1996, by and among SurVivaLink Corporation and Medtronic, Inc.; Voting Agreements; the Rights of First Refusal Agreement; the Amended and Restated Promissory Note dated May 12, 1997, between Medtronic and SurVivaLink; and any other agreements between Medtronic and SurVivaLink relating to Medtronic's Ownership Interest in SurVivaLink.

II.

It is further ordered, That:

A. Within ten (10) days of the date on which the Commission accepts the agreement containing consent order for public comment, respondent shall delegate its voting rights held pursuant to all of its Ownership Interests to SurVivaLink in a manner that directs and authorizes SurVivaLink to cast any votes related to such interest in each class of SurVivaLink capital stock in an amount and manner proportional to the vote of all other votes cast by other SurVivaLink shareholders in such class on a particular matter; provided, however, that in any voting matter to which either or both of the Voting Agreements may apply, such delegation shall direct and authorize SurVivaLink to cast any votes related to Medtronic's Ownership Interests in accordance with such Voting Agreement(s). Should any such delegation expire by operation of Minnesota law or otherwise, respondent shall redelegate its rights to SurVivaLink prior to such expiration. Provided, however, that respondent's delegation of its rights as to a particular Ownership Interest may terminate upon respondent's complete and absolute divestiture of that Ownership Interest.

B. Respondent shall not sell or otherwise transfer any of its Ownership Interest to an acquirer without permitting SurVivaLink the opportunity to purchase such interest in accordance with the terms of the Rights of First Refusal Agreement, including Section 6 of such agreement.

C. Respondent shall not join a partnership, limited partnership, syndicate or other group, or otherwise act in concert with any other person, for the purpose of acquiring, holding, voting, or disposing of an Ownership Interest in SurVivaLink.

D. Respondent shall not acquire or exercise any present or contingent right to acquire any additional Ownership Interest in SurVivaLink without providing thirty (30) days' prior written notice to the Commission. In the event that respondent learns that one of its respective employees, agents, or representatives has engaged in such an acquisition or exercise on his or her own initiative and not on behalf of respondent, respondent shall provide written notice of such acquisition or exercise to the Commission within ten (10) days after respondent learns of such acquisition or exercise. Nothing in paragraph II.D shall be construed to prevent Medtronic from receiving stock dividends which are issued to SurVivaLink share-

holders in proportion to their respective voting Ownership Interests. Medtronic shall provide written notice to the Commission of its receipt of any such dividend within ten (10) days of such receipt.

III.

It is further ordered, That respondent shall not:

A. Exercise any right to name, nominate or vote for a member of SurVivaLink's Board of Directors;

B. Participate in the formulation, determination or direction of any business decisions of SurVivaLink;

C. Propose corporate action requiring the approval of SurVivaLink shareholders;

D. Have any of its directors, officers or employees serve simultaneously as an officer or director of SurVivaLink;

E. Inspect or otherwise obtain access to the books and records of SurVivaLink (other than the stock register), even if respondent is entitled to such access pursuant to Minnesota Law, the Contractual Agreements, or otherwise; provided, however, that nothing in paragraph III.E shall prohibit Medtronic, after written notice to the Commission, from seeking or obtaining discovery in any litigation or other proceeding to resolve a claim between SurVivaLink and Medtronic in accordance with the procedures of the forum before which the dispute is pending. With respect to any such discovery, respondent shall enter into a protective order to prevent any information from being used for any purpose other than providing legal representation or evidence as to the particular dispute and to prevent any information from being disclosed to any person(s) not necessary to the resolution of such dispute; and

F. Obtain information from SurVivaLink other than documents available to the general public, except as permitted under paragraph III.E.

IV.

It is further ordered, That respondent shall designate an outside agent to receive such information from SurVivaLink as required to be provided by SurVivaLink pursuant to applicable state law and such additional information as would normally be provided to the other shareholders of SurVivaLink. Such information is limited to information provided to a shareholder by virtue of such shareholder's ownership of the shares of SurVivaLink and not as a result of such

shareholder's position as an officer, director or employee of SurVivaLink. Such information shall not be disseminated to respondent but may only be used by the outside agent to solicit offers for respondent's Ownership Interests or to render an opinion to the respondent as to the overall percentage and value of respondent's Ownership Interests. Such an opinion may disclose the types of information relied upon in formulating such an opinion but shall not disclose any specific information regarding SurVivaLink. Respondent shall notify the Commission and SurVivaLink as to the identity of such outside agent and any change as to the identity of the outside agent to which this information is to be sent.

V.

It is further ordered, That within ten (10) days of the date on which the Commission accepts the agreement containing consent order for public comment, respondent shall return or submit to SurVivaLink all documents, including all copies, whether created by SurVivaLink or any other person, in the possession of Medtronic that contain any trade secrets or other confidential non-public information, commercial information or financial information, other than the Contractual Agreements, received from or relating to SurVivaLink, including, but not limited to, all documents received from SurVivaLink pursuant to the Contractual Agreements.

VI.

It is further ordered, That within thirty (30) days of the date on which this order becomes final, respondent shall distribute a copy of this order to each of its U.S. based directors, officers and employees.

VII.

It is further ordered, That within ten (10) days of the date on which the Commission accepts the agreement containing consent order for public comment, respondent shall deliver a copy of this agreement to SurVivaLink by certified or registered U.S. mail.

VIII.

It is further ordered, That within sixty (60) days of the date this order becomes final and annually thereafter on the anniversary of the date this order becomes final, Medtronic shall submit to the

Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the provisions of this order. Medtronic shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with this order, including a description of all substantive contacts or negotiations with SurVivaLink, including the identity of all parties contacted. Medtronic shall include in its compliance reports copies of all written communications between Medtronic and SurVivaLink, and all written communications between Medtronic and the outside agent designated in paragraph IV.

IX.

It is further ordered, That, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondent, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to any facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent, relating to any matters contained in this consent order; and

B. Upon five (5) days' notice to respondent, and without restraint or interference from respondent, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

X.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the order.

XI.

It is further ordered, That this order shall terminate on the earliest of: (1) respondent's absolute and complete divestiture of all of its Ownership Interest in SurVivaLink; (2) respondent's absolute and complete divestiture of all of the assets or securities of Physio-Control held by Medtronic; or (3) on December 21, 2018.

IN THE MATTER OF

SHELL OIL COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3843. Complaint, Dec. 21, 1998--Decision, Dec. 21, 1998*

This consent order requires, among other things, the Texas-based corporation and its subsidiary to divest portions of the ANR pipeline system to an acquirer that receives the prior approval of the Commission. The consent order also requires the respondents to maintain the viability and marketability of the assets, pending the divestiture of the assets.

Participants

For the Commission: *John Hoagland, Kristen Malmberg, W. David Griggs, Thomas Carter, Morris Morkre, and Jonathan Baker.*

For the respondents: *Richard Brooks, Baker & Botts, Houston, TX. and Dan Wellington, Fulbright & Jaworski, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission") having reason to believe that respondents Shell Oil Company ("Shell") and its subsidiary, Tejas Energy, LLC ("Tejas"), through Tejas' subsidiary Transok, LLC ("Transok"), are subject to the jurisdiction of the Commission and that Tejas' acquisition of certain gas-gathering assets of ANR Field Services Company ("ANRFS") and certain gas processing and other facilities of ANR Production Company ("ANRP"), subsidiaries of The Coastal Corporation ("Coastal"), is in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21, and Section 5(b) of the FTC Act, as amended, 15 U.S.C. 45(b), stating its charges as follows: