

Complaint

IN THE MATTER OF

**GETINGE AB
AND
DATASCOPE CORP.**

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

*Docket C-4251; File No. 091 0000
Complaint, March 9, 2009 – Decision, March 9, 2009*

This consent order addresses the acquisition of Datascope Corp. by Getinge AB. Both companies are engaged in the research, development, manufacturing, marketing, and sale of cardiac surgery devices, including endoscopic vessel harvesting (EVH) devices. The U.S. market for EVH devices is highly concentrated, and the combined firm would account for approximately 90 percent of this market, which is likely to lead to increased prices and decreased innovation for those devices. The order requires Datascope to divest its EVH product line to Sorin Group USA, Inc., or another Commission-approved buyer at no minimum price. The assets to be divested include all third-party contracts to supply the components of the EVH product line. In addition, the order requires Getinge to grant the Commission-approved buyer a covenant not to sue for infringement of any EVH-related patents that Getinge or Datascope held at the time of the acquisition. The order permits Datascope to provide certain services to the Commission-approved buyer to ensure a smooth transition of the product line to the acquirer and continued and uninterrupted service to customers during the transition. The order allows the Commission to appoint an interim monitor to oversee Datascope's compliance with all of its obligations and performance of its responsibilities pursuant to the order. If appointed, the interim monitor would be required to file periodic reports with the Commission about the status of the divestiture, the efforts being made to accomplish the divestiture, and the provision of services and assistance during the transition period. The order contains provisions that allow the Commission to appoint a divestiture trustee if any or all of the remedies are not accomplished within the time frames required by the order.

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Participants

For the *Commission*: *Lisa DeMarchi Sleight, David L. Inglefield, Michael R. Moiseyev, and Robert R. Pickett.*

For the *Respondents*: *Matthew D. Kent and Valarie C. Williams, Alston & Bird LLP; and Jeffrey W. Brennan and Paul D. Frangie, Dechert LLP.*

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Getinge AB (“Getinge”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Datascope Corp. (“Datascope”), 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 (“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, stating its charges as follows:

I. DEFINITIONS

1. “Commission” means the Federal Trade Commission.
2. “Getinge” or “Respondent” means Getinge AB, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Getinge, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
3. “Datascope” means Datascope Corp., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and

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affiliates controlled by Datascope Corp., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

4. “Endoscopic Vessel Harvesting Device” or “EVH Device” means a medical device that allows for the minimally-invasive endoscopic removal of a patient’s saphenous vein or the radial artery for use in coronary artery bypass graft surgery.

5. “FDA” means the United States Food and Drug Administration.

6. “Respondents” means Getinge and Datascope individually and collectively.

II. RESPONDENTS

7. Respondent Getinge is a corporation organized, existing, and doing business under and by virtue of the laws of Sweden, with its headquarters located at Ekebergsvagen, Getinge, Sweden 31044. Getinge’s subsidiary in the United States, Getinge USA, Inc., is located at 1777 E. Henrietta Rd, Rochester, NY 14623. Getinge, among other things, is engaged in the research, development, marketing and sale of cardiac surgery devices, including EVH Devices.

8. Respondent Datascope is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 14 Philips Parkway, Montvale, New Jersey 07645. Datascope, among other things, is engaged in the research, development, manufacturing, marketing, and sale of cardiac surgery devices, including EVH Devices.

9. Respondents are, and at all times relevant herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and are corporations whose business is in or affects commerce, as “commerce” is defined

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in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. PROPOSED ACQUISITION

10. On September 15, 2008, Getinge and Datascope entered into an agreement and plan of merger (the “Merger Agreement”) whereby Getinge agreed to acquire all of the outstanding shares of Datascope common stock in a transaction valued at approximately \$865 million (the “Acquisition”).

IV. RELEVANT MARKET

11. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the research, development, manufacture, marketing, and/or sale of EVH Devices. The size of the U.S. market for EVH Devices is approximately \$220 million.

12. For the 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.

V. STRUCTURE OF THE MARKETS

13. The U.S. market for EVH Devices is highly concentrated with a pre-acquisition Herfindahl-Hirschman Index (“HHI”) of 7,192 points. Currently, Getinge and Datascope are two of only three companies currently selling EVH Devices in the United States. Getinge dominates the market for these devices, and, together, Getinge and Datascope would account for almost 90 percent of sales in the U.S. market for EVH Devices. The Acquisition would create a duopoly in this market and increase the HHI concentration by 1008 points, resulting in a post-acquisition HHI of 8,200 points.

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VI. ENTRY CONDITIONS

14. Developing Endoscopic Vessel Harvesting Devices, working around and/or acquiring licenses to critical intellectual property related to those devices, obtaining FDA approval for those devices, and marketing those devices takes significantly longer than two years. Therefore, entry into the relevant line of commerce described in Paragraph 11 would not be timely, likely, or sufficient in magnitude, character and scope to deter or counteract the anti-competitive effects of the Acquisition.

VII. EFFECTS OF THE ACQUISITION

15. The effects of the Acquisition, if consummated, may be to substantially 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. eliminating actual, direct and substantial competition between Getinge and Datascope in the market for the research, development, manufacturing, marketing, and sale of EVH Devices; and
- b. increasing the ability of the merged entity to unilaterally raise prices in the relevant market.

VIII. VIOLATIONS CHARGED

16. The Merger Agreement described in Paragraph 10 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

17. The Acquisition described in Paragraph 10, 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.

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WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this ninth day of March, 2009, issues its Complaint against said Respondent.

By the Commission, Commissioner Harbour recused.

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The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Getinge AB (“Getinge”) of Respondent Datascope Corp. (“Datascope”), and Respondent Getinge and Respondent Datascope (collectively, “Respondents”) having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents 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 Respondents

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have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Getinge is a corporation organized, existing and doing business under and by virtue of the laws of Sweden, with its offices and principal place of business located at Ekerbergsvägen 26, SE-31044, Getinge, Sweden.
2. Respondent Datascope is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 14 Philips Parkway, Montvale, NJ 08933.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, 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. “Getinge” means Getinge AB, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Getinge AB, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Effective Date, the term “Getinge” shall include Datascope.

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- B. “Datascope” means Datascope Corp., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Datascope Corp., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Respondents” means Getinge and Datascope, individually and collectively.
- E. “Sorin” means Sorin Group USA Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal place of business located at 14401 W. 65th Way, Arvada, CO 80004-3599.
- F. “Acquisition” means the acquisition contemplated by the “Agreement and Plan of Merger” dated as of September 15, 2008, by and among Getinge and Datascope (“Acquisition Agreement”), whereby Getinge agreed to acquire Datascope.
- G. “Actual Cost” means the cost to Datascope to provide the relevant assistance or service (including direct labor and direct material used and allocation of overhead that is in the same proportion that was used by Datascope on November 25, 2008), and any additional fees or expenses agreed to from time to time by the Commission-approved Acquirer.
- H. “Agency(ies)” means any governmental regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s) or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution or sale of EVH Products.

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- I. “Closing Date” means the date on which Respondents (or a Divestiture Trustee) and a Commission-approved Acquirer consummate a transaction to grant, license, deliver or otherwise convey relevant assets pursuant to this Order.
- J. “Commission-approved Acquirer” means the following:
 - 1. Sorin, if Sorin has not been rejected by the Commission pursuant to Paragraph II.A. of this Order; or
 - 2. an entity that receives the prior approval of the Commission to receive particular assets that the Respondents are required to grant, license, deliver or otherwise convey pursuant to this Order.
- K. “Confidential Business Information” means all information owned by, or in the possession or control of, Datascope that is not in the public domain and that is related to the research, Development, manufacture, marketing, importation, exportation, supply, sales, sales support, or use of a Product; *provided, however*, that “Confidential Business Information” shall not include (1) information that subsequently falls within the public domain through no violation of this Order or of any confidentiality agreement with respect to such information by Respondents or (2) information that Getinge can demonstrate it obtained without the assistance of Datascope prior to the Acquisition.
- L. “Sorin Agreement” means the “Asset Purchase Agreement” by and between Datascope, Sorin and Getinge, dated as of November 25, 2008, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the EVH Business, that have been approved by the Commission to accomplish the requirements of this Order. The Sorin Agreement is attached to this Order as non-public Appendix I.

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- M. “Designee” means any entity that will manufacture a Datascope EVH Product for a Commission-approved Acquirer.
- N. “Development” means all preclinical and clinical drug and/or device development activities, including test method development and stability testing, toxicology, bioequivalency, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting clinical trials for the purpose of obtaining any and all approvals, licenses, registrations or authorizations from any Agency necessary for the manufacture, use, storage, import, export, transport, promotion, marketing and sale of a Product (including any governmental price or reimbursement approvals), Product approval and registration, and regulatory affairs related to the foregoing. “Develop” means to engage in Development.
- O. “Divestiture Trustee” means a trustee appointed by the Commission pursuant to the relevant provisions of this Order.
- P. “Effective Date” means the earlier of the following dates:
1. the date the Respondents close on the Acquisition Agreement; or
 2. the date the merger contemplated by the Acquisition Agreement becomes effective by filing articles of merger with the Secretary of State of the State of Delaware.
- Q. “EVH Business” means all of Datascope’s assets, tangible and intangible, businesses and goodwill, related to the research, Development, manufacture, distribution, marketing or sale of Datascope EVH Products as more specifically set forth in the Sorin Agreement and including, without limitation, the following:

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1. all EVH Intellectual Property;
2. all EVH Manufacturing Technology;
3. all EVH Scientific and Regulatory Material;
4. all marketing materials;
5. all books, records and files related to the foregoing or to Datascope EVH Products;
6. all EVH Manufacturing Equipment;
7. to the extent related to the Datascope EVH Products, all of Datascope's rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors, and consignees, in each case that are Third Parties, including, without limitation, all of Datascope's contracts with any Third Party to the extent related to the supply of components used in the manufacture of Datascope EVH Products;
8. all inventory, including raw materials, packaging materials, work-in-process and finished goods, in each case to the extent consisting of, or intended for use in the manufacture of, Datascope EVH Products;
9. all commitments and orders for the purchase of goods that have not been shipped, to the extent such goods are, or are intended for use in the manufacture of, Datascope EVH Products;
10. all rights under warranties and guarantees, express or implied, with respect to Datascope EVH Products; and

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11. all items of prepaid expenses, to the extent related to Datascope EVH Products;

provided, however, that “EVH Business” does not include any portion of any of the foregoing assets, businesses and goodwill that does not relate to Datascope EVH Products;

provided further, however, that “EVH Business” does not include any of the following: (i) the name “Datascope” or the names of any other divisions, businesses, corporations or companies owned by Datascope; (ii) any trademarks, trade names or logos used on other of Datascope’s Products; (iii) any interest in real property; (iv) any plant or other facilities; or (v) any assets, tangible and intangible, businesses or goodwill that were owned by Getinge immediately prior to the Effective Date;

provided further, however, that with respect to documents or other materials included in the EVH Business that contain information (i) that relates both to the Datascope EVH Products and to other products or businesses of Datascope or (ii) for which Datascope has a legal obligation to retain the original copies, Respondents shall be required to provide only copies or, at their option, relevant excerpts of such documents and materials, but Respondents shall provide the Commission-approved Acquirer access to the originals of such documents as necessary, it being a purpose of this proviso to ensure that Respondents not be required to divest themselves completely of records or information that relates to products or businesses other than the Datascope EVH Products;

provided further, however, that with respect to any contract or agreement included in the EVH Business that relates both to the Datascope EVH Products and to any other product, Respondents may, concurrently with assigning such contract or agreement to the extent it relates to the Datascope EVH

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Products, retain their rights under such contract or agreement for purposes of such other product(s).

- R. “EVH Employee Information” means the following, as and to the extent permitted by Law:
1. with respect to each EVH Employee, the following information:
 - a. the date of hire and effective service date;
 - b. job title or position held;
 - c. a specific description of the employee’s responsibilities related to the EVH Business;
 - d. for sales representatives, the sales ranking as of November 25, 2008, and for other employees, the most recent performance rating;
 - e. the base salary range of all EVH Employees having the same title or position;
 - f. the aggregate annual compensation for Datascope’s last fiscal year and as targeted for the current fiscal year;
 - g. employment status (*i.e.*, active or on leave or disability; full-time or part-time); and
 - h. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees.
 2. at the Commission-approved Acquirer’s option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the EVH Employees.

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- S. “EVH Employees” means all those employees listed in non-public Appendix II to this Decision and Order.
- T. “EVH Intellectual Property” means all of the following that are owned by Datascope, to the extent related to the Datascope EVH Products, each as more specifically described in the Sorin Agreement:
1. Patents;
 2. trademarks, trade names, trade dress, trade secrets, know-how, techniques, data, inventions, practices, methods and other confidential or proprietary technical, business, research, Development and other information;
 3. rights to obtain and file for Patents and registrations thereof; and
 4. rights under any license to any of the foregoing;
- provided, however, “EVH Intellectual Property” does not include (i) the name “Datascope”, or the names of any other corporations, divisions or companies owned by Datascope; (ii) any trademarks, trade names or logos used on other of Respondents’ Products; or (iii) any Getinge intellectual property.*
- U. “EVH Kits” means procedural kits for endoscopic vessel harvesting, including those currently marketed by Datascope under the trademarks CLEARGLIDE® or WATCHBAND INCISION™.
- V. “EVH Manufacturing Equipment” means all equipment of Datascope utilized in the manufacture of Datascope EVH Products, but does not include (i) any sterilization, labeling or packaging equipment or (ii) any assets utilized by Getinge in the manufacture of EVH Products immediately prior to the Effective Date.

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- W. “EVH Manufacturing Technology” means all technology, trade secrets, know-how, and proprietary information (whether patented, patentable or otherwise) related to the manufacture (including that relating to all equipment used to manufacture a Datascope EVH Product in final finished form), validation, packaging, release testing, stability and shelf life of Datascope EVH Products, including all product specifications, processes, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering and other manuals and drawings, standard operating procedures, flow diagrams, chemical, pharmacological, toxicological, pharmaceutical, physical and analytical, safety, efficacy, bioequivalency, quality assurance, quality control and clinical data, research records, compositions, annual product reviews, process validation reports, analytical method validation reports, specifications for stability trending and process controls, testing and reference standards for impurities in and degradation of products, technical data packages, chemical and physical characterizations, dissolution test methods and results, formulations for administration, clinical trial reports, regulatory communications and labeling of, for or with respect to the Datascope EVH Products, and all other information related to the manufacturing process, supplier lists, and supplier contracts for the Datascope EVH Products.
- X. “EVH Products” means endoscopic vessel harvesting Products, whether or not included in EVH Kits.
- Y. “EVH Scientific and Regulatory Material” means all technological, scientific, chemical, biological, pharmacological, toxicological, regulatory and clinical trial materials and information related to Datascope EVH Products, and all of Datascope’s rights to use such materials, in any and all jurisdictions (to the extent Datascope can legally transfer such rights).

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- Z. “Field” means the prevention, treatment, diagnosis, or control of a particular medical condition.
- AA. “Governmental Entity” means any Federal, state, local or non-U.S. government or any court, legislature, governmental agency or governmental commission or any judicial or regulatory authority of any government.
- BB. “Interim Monitor” means a monitor appointed by the Commission pursuant to Paragraph III of this Order.
- CC. “Datascope EVH Products” mean those EVH Products researched, Developed, manufactured and/or sold by Datascope immediately prior to the Effective Date, and including all such EVH Products that are introduced by Datascope on or before the Closing Date.
- DD. “Law” means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law by any Governmental Entity.
- EE. “Patents” means all patents, patent applications and statutory invention registrations in which Datascope holds rights, either through assignment or license, as of the Effective Date (except where this Order specifies a different time), and includes all reissues, divisions, continuations, continuations-in-part, to the extent the claims of such continuations-in-part are fully supported pursuant to 35 U.S.C. § 112 by such patents and/or applications owned or licensed by Datascope as of the Effective Date, substitutions, reexaminations, restorations, and/or patent term extensions thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto, related to a Product.
- FF. “Product” means any medical device.

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GG. “Remedial Agreement” means the following:

1. the Sorin Agreement, if such agreement has not been rejected by the Commission pursuant to Paragraph II.A. of this Order; and
2. any agreement between Respondents and a Commission-approved Acquirer (or between a Divestiture Trustee and a Commission-approved Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets to be granted, licensed, delivered or otherwise conveyed, that have been approved by the Commission to accomplish the requirements of this Order.

HH. “Third Party(ies)” means any private entity other than the following: (1) the Respondents, or (2) the Commission-approved Acquirer.

II.

IT IS FURTHER ORDERED that:

- A. Not later than ten (10) days after the Effective Date, Respondents shall divest the EVH Business to Sorin pursuant to and in accordance with the Sorin Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Sorin or to reduce any obligations of Respondents under such agreement);

provided, however, that, if Respondents have divested the EVH Business to Sorin prior to the date this Order becomes final, and if, at the time the Commission determines to make

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this Order final, the Commission notifies Respondents that Sorin is not an acceptable acquirer of the EVH Business, then Respondents shall immediately rescind the transaction with Sorin and shall divest the EVH Business within six (6) months from the date the Order becomes final, absolutely and in good faith, at no minimum price, to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission;

provided further, however, that if the Respondents have divested the EVH Business to Sorin prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies the Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct the Respondents, or appoint a Divestiture Trustee, pursuant to Paragraph IV of this Order, to effect such modifications to the manner of divesting the EVH Business to Sorin (including, but not limited to, entering into additional agreements or arrangements) as may be necessary to satisfy the requirements of this Order;

provided further, however, that Respondents shall not be required to divest to the Commission-approved Acquirer any portion of the EVH Business if the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) does not require such portion of the EVH Business for the continued research, Development, manufacture, use, import, distribution, marketing or sale of the Datascope EVH Products and if the Commission approved the divestiture without such portion of the EVH Business.

- B. Any Remedial Agreement that has been approved by the Commission between Respondents (or a Divestiture Trustee) and a Commission-approved Acquirer of the EVH Business shall be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Remedial

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Agreement related to the EVH Business shall constitute a failure to comply with this Order.

- C. Respondents shall include in any Remedial Agreement, and Respondents shall observe, a covenant that Respondents shall not join, or file, prosecute or maintain any suit, in Law or equity, against the Commission-approved Acquirer (or the Commission-approved Acquirer's assignee of the entire Remedial Agreement) for the research, Development, manufacture, use, import, distribution, marketing or sale of Datascope EVH Products currently being sold by Datascope, *provided, however*, that the covenant need not cover research and development projects, concepts or initiatives, or any change made to the Datascope EVH Products after the Effective Date.
- D. Until the Closing Date of the EVH Business, Respondents shall take such actions as are necessary to maintain the viability and marketability of the EVH Business and to prevent the destruction, removal, wasting, deterioration, or impairment of the EVH Business, except for ordinary wear and tear and the disposition of inventory and other assets in the ordinary course of business.
- E. At the option of the Commission-approved Acquirer (to be exercised no later than 60 days after the date the Commission-approved Acquirer signs a Remedial Agreement with Respondents to effect the acquisition of the EVH Business), Respondents shall include in any Remedial Agreement the following provisions, and Respondents shall commit to satisfy the following:
 - 1. Respondents shall, for a period of up to eighteen (18) months after the Closing Date at no more than Respondents' Actual Cost, provide agreed upon transition services necessary for the continued research, Development, manufacture, use, import, distribution,

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marketing or sale of Datascope EVH Products by the Commission-approved Acquirer.

2. Respondents shall provide to the Commission-approved Acquirer all documents or materials in Datascope's possession, custody or control as of the Effective Date to the extent related to Third Party EVH Products or EVH Products sold by Getinge prior to the Effective Date; *provided, however*, that as regards to any documents or materials described in this Paragraph II.E.2. that are not owned by Respondents and which Respondents are prohibited by contract or Law from providing to the Commission-approved Acquirer, Respondents shall not be required to provide such documents or materials to the Commission-approved Acquirer if Respondents have made all reasonable efforts to obtain a waiver of such prohibition but have not been successful; *provided further, however*, that Respondents shall not be required to provide to the Commission-approved Acquirer any documents or materials described in this Paragraph II.E.2. that Datascope received through the due diligence process related to the Acquisition; *provided further, however*, that Respondents shall not be required to provide to the Commission-approved Acquirer any documents or materials described in this Paragraph II.E.2. that were owned by, or in the possession, custody or control of, Getinge immediately prior to the Effective Date.

F. Respondents shall:

1. not later than forty-five (45) days after signing the Remedial Agreement, (a) provide to the Commission-approved Acquirer a list of all EVH Employees; (b) allow the Commission-approved Acquirer to interview any EVH Employees; and (c) in compliance with all Laws, allow the Commission-approved Acquirer to inspect the EVH Employee Information;

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2. not later than fifteen (15) days after signing the Remedial Agreement, provide an opportunity for the Commission-approved Acquirer: (a) to meet personally, and outside the presence or hearing of any employee or agent of Respondent, with any one or more of the EVH Employees; and (b) to make offers of employment to any one or more of the EVH Employees;
3. not interfere, directly or indirectly, with the hiring or employing by the Commission-approved Acquirer of EVH Employees, and shall remove any impediments or incentives within the control of Respondents that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any non-compete provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to an EVH Employee who receives a written offer of employment from the Commission-approved Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;
4. provide all EVH Employees with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include, but are not limited to, a continuation, until the Closing Date, of all employee benefits, including regularly scheduled raises, bonuses and vesting of pension benefits (as permitted by law and for those EVH Employees covered by a pension plan), offered by Respondent;
5. provide to each EVH Employee that is offered employment by the Commission-approved Acquirer financial incentives to accept employment with the Commission-approved Acquirer on or about the Closing

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Date, or reimburse the Commission-approved Acquirer for its provision of such incentive. Such incentives shall include a bonus for each such employee, equal to 25% of the employee's annual base salary as of October 2008, who accepts an offer of employment from the Commission-approved Acquirer within one month of the Closing Date and remains employed by the Commission-approved Acquirer for a period of sixty (60) days, payable by Respondents within ninety (90) days after the Closing Date; and

6. not, for a period of one (1) year following the Closing Date, directly or indirectly, solicit or otherwise attempt to induce any of the EVH Employees to terminate their employment with the Commission-approved Acquirer; *provided however*, that Respondents may:
 - a. advertise for employees in newspapers, trade publications or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at the EVH Employees; or
 - b. hire EVH Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph II.F.6;

provided further however, that this Paragraph II.F.6 shall not prohibit Respondents from making offers of employment to or employing any EVH Employee where the Commission-approved Acquirer has notified Respondents in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer.

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- G. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary for the divestiture of the EVH Business, and for the continued research, Development, manufacture, use, import, distribution, marketing or sale of Datascope EVH Products by the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer); *provided, however*, that Respondents shall not be required to obtain consents from customers necessary to divest contracts that, in the aggregate, represent less than 5% of Datascope's worldwide EVH Kit sales for the period January 1, 2008 to June 30, 2008.
- H. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset that is a permit, license or right granted by any domestic or foreign governmental entity, Respondents shall provide such assistance as the Commission-approved Acquirer may reasonably request in the Commission-approved Acquirer's efforts to obtain a comparable permit, license or right.
- I. Other than as necessary to comply with the requirements of this Order, Respondents shall not use, directly or indirectly, any Confidential Business Information related to the research, Development, manufacture, use, import, distribution, marketing or sale of the Datascope EVH Products, and shall not disclose or convey such Confidential Business Information, directly or indirectly, to any person except in connection with the divestiture of the EVH Business, and to the Divestiture Trustee, if any.
- J. Respondents shall, to the extent permissible under applicable laws and as a condition of continued employment post-divestiture, require that each employee of Respondents with access to Confidential Business Information related to the EVH Business sign a confidentiality agreement pursuant to which such employee shall be required to maintain all such Confidential Business Information strictly confidential,

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including the nondisclosure of such information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order); *provided however*, that:

1. Respondents may use such information only to the extent necessary to defend or prosecute claims relating to assets or liabilities that are retained by Respondents after divestiture; and
2. This Paragraph II.J. shall not apply to any Confidential Business Information related to the EVH Business that Respondents can demonstrate to the Commission that Getinge had prior to the Effective Date.

K. Counsel for Respondents (including in-house counsel under appropriate confidentiality arrangements) may retain unredacted copies of all documents or other materials provided to the Commission-approved Acquirer and may have access to original documents provided to the Commission-approved Acquirer. Respondents' use or disclosure of any documents or materials that are retained or accessed by Respondents solely by virtue of this Paragraph II.K (and not, for example, pursuant to the second proviso of Paragraph I.Q) shall be limited to the following:

1. to comply with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals), any data retention requirement of any applicable Governmental Entity, or any taxation requirements; and
2. to defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the EVH Business;

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provided, however, that Respondents shall: (i) require those (other than Governmental Entities) who view any documents or materials that are retained or accessed by Respondents solely by virtue of this Paragraph II.K. to enter into reasonable and customary confidentiality agreements with the Commission-approved Acquirer (but shall not be deemed to have violated this requirement if the Commission-approved Acquirer withholds such agreement unreasonably); (ii) inform any Governmental Entities who seek to view any documents or materials that are retained or accessed by Respondents solely by virtue of this Paragraph II.K. of Respondents' obligation to keep such information confidential, and give the Commission-approved Acquirer as much prior notice of complying with such request from the Governmental Entity as is reasonable in the circumstances, subject to any requirements of Law; and (iii) use all reasonable efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

- L. The purpose of the divestiture of the EVH Business is to ensure the continuing, viable, and competitive operation of the EVH Business in the same business and in the same manner in which the EVH Business was engaged at the time of the announcement of the proposed Acquisition and to remedy the lessening of competition alleged in the Commission's complaint.

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III.**IT IS FURTHER ORDERED** that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor (“Interim Monitor”) to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by Paragraph II of this Order and the Remedial Agreement related to the divestiture of the EVH Business.
- B. The Commission shall select the Interim Monitor, subject to the consent of Getinge, which consent shall not be unreasonably withheld. If Getinge has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Getinge of the identity of any proposed Interim Monitor, Getinge shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents’ compliance with the relevant requirements of this Order in a manner consistent with the purposes of this Order.
- D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
 - 1. The Interim Monitor shall have the power and authority to monitor Respondents’ compliance with the divestiture

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and asset maintenance obligations and related requirements of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission.

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Interim Monitor shall serve until the later of:
 - a. the completion by Respondents of the divestiture of all relevant assets required to be granted, licensed, delivered, or otherwise conveyed pursuant to this Order in a manner that fully satisfies the requirements of this Order and notification by the Commission-approved Acquirer to the Interim Monitor that it (or its Designee(s)) is fully capable of producing the Datascope EVH Products acquired pursuant to a Remedial Agreement independently of Respondents; or
 - b. the completion by Respondents of the last obligation under this Order pertaining to the Interim Monitor's service;

provided, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of this Order.

4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance

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with its obligations under this Order, including, but not limited to, its obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with this Order.

5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of the Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
6. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
7. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by the Commission-approved Acquirer with respect to the performance of Respondents' obligations under this

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Order or the Remedial Agreement. Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under this Order.

8. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
- H. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IV.

Decision and Order

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations to grant, license, deliver or otherwise convey relevant assets as required by this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to grant, license, deliver or otherwise convey the assets required to be granted, licensed, delivered or otherwise conveyed pursuant to each of the relevant Paragraphs in a manner that satisfies the requirements of each such Paragraph. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to grant, license, deliver or otherwise convey the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Getinge, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Getinge has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Getinge of the identity of any proposed Divestiture Trustee, Getinge shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

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- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to grant, license, deliver or otherwise convey the assets that are required by this Order to be granted, licensed, delivered or otherwise conveyed.
 - 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, the Commission may extend the divestiture period only two (2) times.
 - 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other

Decision and Order

relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. Each divestiture shall be made in the manner and to an acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Getinge from among those approved by the Commission; *provided further, however*, that Getinge shall select such entity within five (5) Days after receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture

Decision and Order

Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Getinge, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be granted, licensed, transferred, delivered or otherwise conveyed by this Order.
8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and

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assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
- G. The Divestiture Trustee appointed pursuant to this Paragraph may be the same person appointed as Interim Monitor pursuant to the relevant provisions of this Order.

V.**IT IS FURTHER ORDERED** that:

- A. Within five (5) days of the Acquisition, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Within thirty (30) days after the date this Order becomes final, and every sixty (60) Days thereafter until Respondents have fully complied with Paragraphs II.A., II.D., II.E., II.F., II.G., II.H., II.J., and all their responsibilities to render transitional services to the Commission-approved Acquirer as provided in the Remedial Agreement(s), Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall submit at the same time a copy

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of their report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall include in its reports, among other things that are required from time to time:

1. a full description of the efforts being made to comply with the relevant Paragraphs of this Order;
2. if Sorin is rejected by the Commission pursuant to Paragraph II.A., a description of all substantive contacts or negotiations related to the divestiture of the EVH Business and the identity of all parties contacted and copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing its obligations to divest the EVH Business;
3. a detailed plan to deliver all Confidential Business Information required to be delivered to the Commission-approved Acquirer pursuant to Paragraphs II.A. and II.E., and agreed upon by the Commission-approved Acquirer and the Interim Monitor (if applicable) and any updates or changes to such plan;
4. a description of all Confidential Business Information delivered to the Commission-approved Acquirer, including the type of information delivered, method of delivery, and date(s) of delivery;
5. a description of the Confidential Business Information currently remaining to be delivered and a projected date(s) of delivery; and
6. a description of all technical assistance provided to the Commission-approved Acquirer during the reporting period.

VI.

Decision and Order

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondents, (2) acquisition, merger or consolidation of Respondents, or (3) any other change in the Respondents that may affect compliance obligations arising out of this Order, including, but not limited to, assignment, the creation or dissolution of subsidiaries, or any other change in Respondents.

VII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of the Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondents related to compliance with this Order, which copying services shall be provided by the Respondents at their expense; and
- B. to interview officers, directors, or employees of the Respondents, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on March 9, 2019.

By the Commission, Commissioner Harbour recused.

Decision and Order

**APPENDIX I
NON-PUBLIC**

SORIN AGREEMENT

**[Redacted From Public Record
But Incorporated By Reference]**

**APPENDIX II
NON-PUBLIC**

EVH EMPLOYEES

**[Redacted From Public Record
But Incorporated By Reference]**

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT****I. Introduction**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from Getinge AB (“Getinge”) and Datascope Corp. (“Datascope”). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that would otherwise result from Getinge’s acquisition of Datascope. Under the terms of the proposed Consent Agreement, Datascope is required to divest to a third party its endoscopic vessel harvesting (“EVH”) product line.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to an Agreement and Plan of Merger dated September 15, 2008, Getinge proposes to acquire all of the outstanding shares of Datascope common stock in a transaction valued at approximately \$865 million. The Commission’s complaint alleges that the proposed acquisition, if consummated, would violate 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, by lessening competition in the U.S. market for EVH devices. The proposed Consent Agreement would remedy the alleged violations by replacing the competition that would be lost in this market as a result of the acquisition.

Analysis to Aid Public Comment

II. The Parties

Getinge is a leading global provider of equipment and systems in the healthcare and life sciences fields. Getinge is divided into three business segments: Medical Systems, Extended Care, and Infection Control. The Medical Systems segment manufactures and sells, among other things, surgical tables and lights. In January 2008, Getinge acquired the Cardiac and Vascular divisions of Boston Scientific Corporation, including Guidant's EVH business, which Boston Scientific had purchased in 2006. The Boston Scientific divisions have been integrated into the Medical Systems segment of Getinge, and the products are now sold under the Maquet brand. In 2007, Getinge generated global sales of \$2.2 billion.

Datascope is the world's leading supplier of intra-aortic balloon pump counter pulsation devices, and is a diversified medical device company that develops, manufactures and sells proprietary products for clinical health care markets in interventional cardiology, cardiovascular and vascular surgery, and critical care. Datascope acquired the EVH devices at issue in this case from Ethicon, a Johnson & Johnson company, in January 2006. Datascope's global sales for fiscal year 2008 were \$230.9 million, and its U.S. sales were \$98.8 million. Datascope's EVH device is part of its Cardiac Assist business unit, which accounted for \$189.3 million of Datascope's worldwide sales.

III. Endoscopic Vessel Harvesting Devices

The EVH device market is the relevant product market in which to analyze the competitive effects of the proposed acquisition. EVH devices are used in coronary artery bypass graft ("CABG") surgery, most often to remove the saphenous vein from the patient's leg, or sometimes the radial artery from the arm, for use as a conduit to bypass one or more blocked coronary arteries. Because it is a minimally-invasive procedure, EVH provides several benefits over the other two vessel harvesting methods (open and bridging) both of which are more invasive, cause more pain and scarring, and carry a greater risk of infection. As a result, neither of the other methods is

Analysis to Aid Public Comment

considered a viable economic alternative for EVH devices. EVH devices, therefore, constitute a separate product market.

The United States is the relevant geographic market in which to analyze the effects of the proposed acquisition on the EVH device market. EVH devices are subject to regulation and cannot be marketed or sold in the United States without prior approval from the U.S. Food and Drug Administration (“FDA”). Receiving FDA approval to market an EVH device in the United States can be a lengthy process. EVH devices sold outside of the United States but not approved by the FDA for sale in the United States therefore do not provide viable competitive alternatives for U.S. consumers.

The U.S. market for EVH devices is highly concentrated, and together, the combined firm would account for approximately 90 percent of this market. Firms seeking to enter the market for EVH devices face regulatory hurdles and significant intellectual property barriers, both of which make entry into the market for EVH devices in the next two to three years highly unlikely. In addition, while the use of EVH devices in CABG surgery is increasing, the number of CABG procedures and related vessel harvesting procedures performed in the United States has been declining as minimally-invasive stenting procedures have increased. As a result, it is unlikely that firms would find it profitable to enter the EVH device market in response to a modest increase in the price of the devices.

The proposed acquisition would result in a duopoly in the market for EVH devices and is likely to lead to increased prices and decreased innovation for those devices.

IV. The Consent Agreement

The proposed Consent Agreement effectively remedies the proposed acquisition’s anticompetitive effects in the U.S. market for EVH devices by requiring Datascope to divest its EVH product line to a Commission-approved buyer at no minimum price. Datascope has reached an agreement to divest the EVH business to Sorin Group USA, Inc. Sorin, a diversified medical device company, has a line of

Analysis to Aid Public Comment

cardiovascular products, including artificial cardiac valves and coronary stents. Pursuant to the Consent Agreement, Datascope is required to accomplish the divestiture of its EVH product line no later than ten days after the acquisition is consummated.

The divestiture will allow Sorin to enter and compete in the EVH market. The assets to be divested include all third party contracts to supply the components of the EVH product line. In addition, the Consent Agreement requires Getinge to grant the Commission-approved buyer a covenant not to sue for infringement of any EVH-related patents that Getinge or Datascope held at the time of the acquisition. The Consent Agreement also permits Datascope to provide certain transitional services to the Commission-approved buyer of the EVH product line assets. These services may be necessary to ensure a smooth transition of the product line to the acquirer and continued and uninterrupted service to customers during the transition. The purchaser will have a secure supply of the EVH product line because third parties supply the components of the EVH product line. Further, Sorin currently is capable of assembling the components and marketing the finished products.

V. Appointment of an Interim Monitor and a Divestiture Trustee

The proposed Consent Agreement includes a provision that allows the Commission to appoint an interim monitor to oversee Datascope's compliance with all of its obligations and performance of its responsibilities pursuant to the Commission's Decision and Order. If appointed, the interim monitor would be required to file periodic reports with the Commission to ensure that the Commission remains informed about the status of the divestitures, the efforts being made to accomplish the divestiture, and the provision of services and assistance during the transition period.

Finally, the proposed Consent Agreement contains provisions that allow the Commission to appoint a divestiture trustee if any or all of the above remedies are not accomplished within the time frames required by the Consent Agreement. The divestiture trustee

Analysis to Aid Public Comment

may be appointed to accomplish any and all of the remedies required by the proposed Consent Agreement that have not yet been fulfilled upon expiration of the time period allotted for each.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.

Complaint

IN THE MATTER OF

GENICA CORPORATION,
AND
COMPGEEKS.COM
D/B/A COMPUTER GEEKS DISCOUNT OUTLET
AND
GEEKS.COM,

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4252; File No. 082 3113
Complaint, March 16, 2009 – Decision, March 16, 2009

This consent order addresses Genica’s representations about the security they provided for sensitive information provided to them by consumers. The Commission’s complaint alleges that respondents represented that they implemented reasonable and appropriate security measures to protect the privacy and confidentiality of personal information. The complaint further alleges that since at least January 2007 and continuing through at least June 2007, hackers repeatedly exploited vulnerabilities by using SQL injection attacks on the www.geeks.com website and web application and found personal information of hundreds of customers, including credit card numbers, expiration dates, and security codes, stored on respondents’ network which they exported over the internet to outside computers. The order prohibits respondents from misrepresenting the extent to which respondents maintain and protect the privacy, confidentiality, or integrity of any personal information collected from or about consumers and requires respondents to establish and maintain a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers.

COMPLAINT

The Federal Trade Commission, having reason to believe that Genica Corporation and Compgeeks.com also doing business as Computer Geeks Discount Outlet and geeks.com (“respondents”) have violated the provisions of the Federal Trade Commission Act,