ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of Össur Hf., Össur Americas Holdings, Inc., and College Park Industries, Inc.
File No. 191-0177

INTRODUCTION

The Federal Trade Commission ("Commission") has accepted from Össur Hf., Össur Americas Holdings, Inc., (collectively "Össur") and College Park Industries, Inc., ("College Park"), subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") designed to remedy the anticompetitive effects that would likely result from Össur's proposed acquisition of College Park. The proposed Decision and Order ("Order") contained in the Consent Agreement requires College Park to divest its myoelectric elbow business to Hugh Steeper Ltd. ("Steeper").

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and decide whether it should withdraw, modify, or make the Consent Agreement final.

Pursuant to a Stock Purchase Agreement dated July 19, 2019, Össur agreed to acquire College Park (the "Acquisition"). 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 FTC Act, as amended, 15 U.S.C. § 45, by substantially lessening future competition between College Park and Össur in the development, manufacturing, marketing, distribution, and sale of myoelectric elbows. The proposed Consent Agreement would remedy the alleged violations by preserving the competition that otherwise would be lost in this market as a result of the proposed Acquisition.

THE PARTIES

Headquartered in Reykjavik, Iceland, Össur Hf. is engaged in the development, manufacture, sale, and distribution of upper and lower-limb prosthetic devices. Össur Hf markets and sells its prosthetics throughout the United States through its subsidiary, Össur Americas Holdings, Inc., which is headquartered in Foothill Ranch, California. College Park, headquartered in Warren, Michigan, also is engaged in the development, manufacture, sale, and distribution of upper and lower-limb prosthetics.

THE RELEVANT PRODUCT MARKET AND MARKET STRUCTURE

The relevant product market in which to assess the competitive effects of the proposed acquisition is no broader than the development, manufacturing, marketing, distribution, and sale of myoelectric elbows. Myoelectric, or powered, elbows use electromyographic signals and battery-powered motors to control movement of the prosthetic. Myoelectric elbows fit directly on the residual limb and use electrical signals generated by muscles to move the motorized

elbow componentry. Myoelectric elbows provide substantial functional advantages over mechanical elbows, such as being easier and more natural to control than mechanical elbows.

The relevant geographic area in which to assess the competitive effects of the Acquisition is the United States. The United States has unique regulatory and reimbursement requirements that distinguish it from other countries where myoelectric elbows are sold, and manufacturers require U.S. sales and clinical personnel to support their U.S. clinic customers.

The U.S. market for myoelectric elbows is highly concentrated. Respondent College Park is a leading supplier of myoelectric elbows and Respondent Össur is currently developing its own myoelectric elbow. The only other participants in the U.S. myoelectric elbow market are Otto Bock Healthcare North America and Fillauer LLC.

EFFECTS OF THE ACQUSITION

Absent a divestiture, the Acquisition is likely to harm customers of myoelectric elbows in the United States. College Park is currently a leading manufacturer of myoelectric elbows in the United States. Össur is the largest prosthetic manufacturer in the United States that does not currently offer a myoelectric elbow, but it is developing a myoelectric elbow to enter the market. Absent the Acquisition, the highly concentrated myoelectric elbow market likely would benefit significantly from Össur's entry and Össur would compete directly for College Park's customers.

ENTRY

Entry into the myoelectric elbow market would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the proposed Acquisition. *De novo* entry is unlikely to occur in a timely manner because the time required for product development and market adoption is lengthy, and the only passive and body-powered elbow manufacturers already sell myoelectric elbows.

THE CONSENT AGREEMENT

The proposed Order would remedy the competitive concerns raised by the proposed transaction by requiring Össur to divest to Steeper the worldwide College Park myoelectric elbow business. The divestiture package consists of the following assets and rights: all assets and rights to research, develop, manufacture, market, and sell the College Park myoelectric elbow products, including all related intellectual property and other confidential business information, manufacturing technology, and existing inventory. Steeper will also be hiring several key College Park employees who are essential to the divested business. Additionally, the Order requires that, at the request of Steeper, Össur must provide transitional assistance for up to fifteen months following the divestiture date (with an option to extend further with Commission approval). These services include logistical, administrative, and sales and marketing support. The Order also includes other standard terms designed to ensure the viability of the divested business. The provisions of the proposed Consent Agreement positions Steeper to become an effective competitor in the market for myoelectric elbows in the United States.

Under the Order, College Park is required to divest its myoelectric elbow business no later than ten days from the close of its acquisition by Össur. If the Commission determines that Steeper is not an acceptable acquirer, or that the manner of the divestiture is not acceptable, the Order requires College Park to either unwind the sale of rights and assets to Steeper and then divest the assets to a Commission-approved acquirer within 180 days of the date the Order becomes final, or modify the divestiture to Steeper in the manner the Commission determines is necessary to satisfy the requirements of the Order.

The Order also requires a monitor to oversee Össur's compliance with the obligations set forth in the Order. If Össur does not fully comply with the divestiture and other requirements of the Order, the Commission may appoint a Divestiture Trustee to divest the myoelectric elbow assets and perform Össur's other obligations consistent with the Order. The Order also requires that Össur shall not, without providing advance written notification to the Commission, acquire any myoelectric prosthetic elbow manufacturer or product for a period of five years from the date the Order is issued.

The purpose of this analysis is to facilitate public comment on the Consent Agreement to aid the Commission in determining whether it should make the Consent Agreement final. This analysis is not an official interpretation of the proposed Consent Agreement and does not modify its terms in any way.