



POLICY & ACTION FROM CONSUMER REPORTS

July 9, 2014

The Honorable Edith Ramirez, Chairwoman
The Honorable Julie Brill
The Honorable Maureen K. Ohlhausen
The Honorable Joshua D. Wright
The Honorable Terrell McSweeney
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Proposed Zimmer-Biomet merger

Dear Chairwoman Ramirez and Commissioners:

Consumers Union, the public policy and advocacy division of Consumer Reports, is writing you about the current review of the proposed merger between Zimmer and Biomet. As you review the competitive implications of this merger, we urge you not to overlook the competitive importance of warranties for hip and knee implant products as a means of helping ensure quality and safety for consumers.

Biomet is the only hip and knee implant manufacturer that offers a warranty. In that sense, it is a unique innovative force in this market. The company provides a lifetime warranty on its Oxford Partial Knee. This puts Biomet in an important position to spur other competitors to compete harder to offer better and more innovative products at better prices, including by offering warranties of their own.

Although the Biomet warranty does not meet all our criteria for what a fully protective warranty should contain, it is nevertheless an important foundation on which other manufacturers can build and improve. In spite of all its shortcomings, we would not want the protections that it currently offers to be lost.

We are concerned that Zimmer, having thus far demonstrated no motivation to offer warranties on its own hip and knee products, might discontinue the Biomet warranty. If this occurs, not only would consumers using the Biomet product no longer obtain this important warranty protection, but the merged company would no longer be subject to the healthy quality-improvement incentives that a warranty creates and reinforces.

While most hip and knee implants do not fail, when they do, the failure can be catastrophic simply due to the great numbers of people involved. Consider the metal-on-metal hip. All of the major companies that would remain after this merger – Zimmer, Johnson & Johnson, Stryker, and Smith & Nephew – have recalled their metal on metal hips. (Biomet also sold a metal-on-metal hip model; they were sued by patients and settled, though they never officially recalled the

product.) But tens of thousands of Americans still have these hips inside their bodies. And for many, these are ticking time bombs. The damage done by metal rubbing on metal can take years to appear, but can then cause devastating systemic harm.

In addition to the human costs, the financial burden on our health care system to pay for devices that fail due to problems with the design or manufacturing is now borne by consumers and their health insurers (a significant amount by Medicare). It would be of great benefit to consumers for manufacturers to provide warranty protection for these kinds of circumstances. But they do not – with the exception of Biomet and its Oxford Partial Knee warranty.

We are aware that the Commission is undertaking a careful investigation of this proposed merger, and we agree that such an investigation is warranted. However your investigation is resolved, Consumers Union would hope that an effective warranty would be preserved, as a spur to other manufacturers to offer effective warranties of their own.

We urge the Commission to take this opportunity to carefully consider the competitive importance of effective warranties in helping promote improved quality on which consumers of hip and knee implant products can rely – in the context of your investigation into the Zimmer-Biomet merger, and more broadly.

Sincerely,

A handwritten signature in cursive script, reading "Lisa McGiffert".

Lisa McGiffert
Project Director. Safe Patient Project

cc: The Honorable Deborah L. Feinstein, Director, Bureau of Competition