reception of 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 agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns the proposed acquisitions by Boston Scientific of Cardiovascular Imaging Systems, Inc. ("CVIS") and SCIMED Life Systems, Inc. ("SCIMED"). The Commission's proposed complaint alleges that Boston Scientific and CVIS each develop, produce and market intravascular ultrasound ("IVUS") catheters for use throughout the world. It also alleges that SCIMED has been working on the development of these products, has manufactured and tested prototypes, and is a likely entrant into the IVUS catheter market. IVUS catheters are used in the diagnosis and treatment of artery

The agreement containing a consent order would, if finally accepted by the Commission, settle charges that the acquisitions may substantially lessen competition in the production and sale of IVUS catheters in the United States. The Commission has reason to believe that the acquisitions would have anticompetitive effects and would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates such anticompetitive effects.

The Commission has filed suit in the United States District Court for the District of Columbia to enjoin Boston Scientific's proposed acquisition of CVIS. That action is stayed by Commission acceptance of the proposed order for public comment, and would be dismissed in the event that the Commission makes final the order.

The Commission's proposed complaint in this matter alleges that Boston Scientific's proposed acquisition of CVIS would eliminate ongoing competition, result in substantially increased concentration, and allow Boston Scientific to exercise market power. It further alleges that Boston Scientific's proposed acquisition of SCIMED would eliminate ongoing competition between Boston Scientific and SCIMED in IVUS catheter research and development, and would eliminate SCIMED as a potential entrant into the IVUS catheter market. The effect of these acquisitions, the complaint alleges, is likely to be higher prices for

IVUS catheters and diminished product innovation.

The order accepted for public comment contains provisions that would require Boston Scientific to license to Hewlett-Packard Company or to another person that receives the prior approval of the Commission a broad package of patents and technology relating to IVUS catheters. This package would include rights to Boston Scientific's IVUS catheter patents, as well as the patents and technology that Boston Scientific proposes to acquire from both CVIS and SCIMED.

The order also would require Boston Scientific to provide, on request by the licensee, certain technical assistance sufficient to facilitate the licensee's use of the licensed technology and patents to enter the IVUS catheter market. For IVUS catheters of the type currently offered by CVIS, this requirement includes assistance for a period of three years in manufacturing and obtaining regulatory approvals. It also requires Boston Scientific to allow the licensee, for a period of two years, to consult with Boston Scientific employees for training in the design and manufacture of IVUS catheters. The order would also require Boston Scientific to permit CVIS' and SCIMED's current employees to take employment with the licensee. In order to further facilitate entry into IVUS catheters, the order would prohibit Boston Scientific from entering into exclusive contracts with manufacturers of IVUS consoles that would exclude a new IVUS catheter producer from the

The order would further provide for an interim supply agreement between Boston Scientific and the licensee, to extend for a period of three years, which covers the time that such a licensee could be expected to require to enter the IVUS catheter market with commercial products that have obtained regulatory approval.

Under the terms of the order, Boston Scientific must, if it does not license Hewlett-Packard, grant a license to a Commission approved licensee within six months of the date the order becomes final. If Boston Scientific fails to do so, the Commission may appoint a trustee to license the IVUS patents and technology, and, if necessary, to divest CVIS together with SCIMED's IVUS technology and patents.

A hold separate agreement made a part of the consent requires Boston Scientific, until it accomplishes the licensing required by the order, or until the trustee accomplishes the licensing or divestiture required by the order, or until May 26, 1995 if the order is not made final by that date, to hold separate

and preserve all of the assets and businesses acquired from CVIS.

For a period of ten years from its effective date, the order would also prohibit Boston Scientific from acquiring, without prior Commission approval, more than one percent of the stock of, or any other interest in, any company engaged in the research, development, or manufacture for sale of IVUS catheters in the United States, assets used or previously used for the manufacture of IVUS catheters for sale in the United States, or exclusive rights to patents or other technology used for the manufacture or sale of IVUS catheters in the United States.

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of the acquisition. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

Donald S. Clark, *Secretary.*

Statement of Commissioner Mary L. Azcuenaga, Concurring in Part and Dissenting in Part, in Boston Scientific Corporation, File 951–0002

Today the Commission decides to publish for comment a proposed consent order to settle concerns arising from the proposed acquisitions by Boston Scientific of CVIS and SciMed. Although I have reason to believe that the proposed acquisitions would be unlawful and the proposed consent agreement appears likely to provide an appropriate remedy for the violations, two provisions of the proposed settlement are troubling: one is the negotiated agreement to curtail the public comment period; the second is the fixed date for the expiration of the hold separate agreement.

Although Boston Scientific may be able to show good reason why the public comment period under Section 2.34 of the Commission's Rules of Practice, 16 C.F.R. § 2.34, should be curtailed from the usual 60 days, it has made no attempt to do so. Instead, without any proffered justification, Boston Scientific and the staff have negotiated a 30-day public comment period. It should go without saying that the requirements of the Commission's Rules of Practice should not be a matter for negotiation. The Commission's

¹The rules have the force and effect of law and should not be taken lightly. Departing from the rules without justification leads to inequality of treatment and leaves the Commission open to charges of arbitrary and capricious decisionmaking.

The duration of the public comment period is not a trivial matter. *Cf.* the Tunney Act, 15 U.S.C. § 16,