



August 31, 2006

Legal Policy Section  
Antitrust Division  
"Comments Re. Sect. 2  
United States Department of Justice  
950 Pennsylvania Avenue – Suite 3234  
Washington, DC 20530

Re: "Comments Regarding Section 2 Hearings, Project No. PO62106"

To Whom It May Concern:

Vermed, Inc. is a domestic manufacturer of medical devices, specifically medical sensors, and a wholly-owned subsidiary of Cardiodynamics, Inc., a NASDAQ company. An example of a medical sensor is an electrocardiogram (ekg) sensor, which is the disposable stick-on device to which a wire is connected when one is having an ekg exam or stress test. By Department of Commerce definition, Vermed is a "small business"; our principal competitors are Tyco-Kendall and 3M, both Fortune 500 companies.

The purpose of this communication is to respond to your solicitation for "the types of business practices that the Agencies should examine in the upcoming Hearings, including examples of real-world conduct. . ."

*Product Tying and Bundling:*

Example 1: Vermed was the supplier of private-labeled ekg sensors to Owens & Minor, "the nation's leading distributor of national brand-name medical/surgical supplies to hospitals and integrated healthcare systems." Via phone on May 17, 2006, and confirmed in writing (see Attachment A) on May 24, this agreement was terminated per section 9.B of our Agreement ("Termination Without Cause"). In conversation on May 17, reasons given for the termination included "new enhanced agreements with 3M and Kendall in which Owens and Minor receives benefit from selling only 3M and Kendall Healthcare supplies. . ." (See Attachment B, K. Utton, Vermed National Contract Specialist, Letter to File).

Example 2: Vermed, Tyco-Kendall, and 3M have a vendor contract with Premier, Inc., “the healthcare industry’s largest GPO” (Group Purchasing Organization.) This contract is best described as a “license” to do business with Premier members.

On March 24, 2005 in a meeting with Jeanie Brown, Vice President of Health Enterprise Cooperative, a Premier member Integrated Delivery Network (IDN), she advised that there was no real opportunity for Vermed, because “they received an attractive opportunity to aggregate from 3M.” This is one of many examples that our sales organization encounters.

Note: Typically, the way “aggregation” works is that the vendor provides a discount to the (individual product) GPO contracted price on all (or a designated list) of vendor products when a commitment is made to purchase all referenced products and achieve certain overall volume purchasing levels (See Attachment C, Tyco Healthcare Unison Corporate Incentive Program.)

Interestingly, as a result of earlier hearings on this subject, the larger GPO’s agreed to “unbundle” or “disaggregate” bundled contracts to eliminate discrimination against single-product vendors. Functionally, the larger vendors e.g. 3M and Tyco simply moved the “bundling” strategy to the IDN and hospital system level.

#### *Predatory Pricing*

Vermed is the supplier of private-labeled sensors to Physicians Sales and Service (PSS), “the country’s largest supplier of medical products to physician practices.” This is Vermed’s largest account.

In the 3<sup>rd</sup> quarter of calendar 2006, Tyco-Kendall approached this account with a bid for their private label business at prices that are at or below product cost, and, obviously, well below Tyco-Kendall healthcare profit margins.

Sincerely yours,

Rich Kalich,  
President

Attachments: A: M. Holtz Letter  
B: K. Utton Letter to File  
C: Tyco-Kendall “Unison Corporate Incentive Program”

RLK: e: Vermed Bundling Comments  
08/31/06