

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
 Pamela Jones Harbour
 Jon Leibowitz
 William E. Kovacic
 J. Thomas Rosch

_____)
In the Matter of)
) Docket No. C-
HOLOGIC, INC.,)
a corporation)
_____)

COMPLAINT

Pursuant to t

patient positioning, a stereotactic x-ray imaging system capable of acquiring images at two distinct angles necessary to plot coordinates, and a guidance mechanism for directing biopsy sampling devices to coordinates specific to regions within the breast. “Prone Stereotactic Breast Biopsy Systems” includes research and development, and clinical testing activities related to the incorporation of an ultrasound scanning mechanism on the Prone Stereotactic Breast Biopsy System and the use of the Prone Stereotactic Breast Biopsy System for purposes of patient positioning during brachytherapy procedures.

4. “Acquisition” means the acquisition of Fischer’s assets by Hologic, including Fischer’s intellectual property and other assets relating to its mammography and breast biopsy businesses, including the patents, trademarks, and other intellectual property relating to Fischer’s prone SBBS, MammoTest.

II. HOLOGIC

5. Respondent Hologic is a for-profit corporation organized, existing and doing business under and by the virtue of the laws of the State of Delaware, with its principal place of business located at 35 Crosby Drive, Bedford, Massachusetts, 01730.
6. Hologic specializes in the development and marketing of diagnostic and imaging medical devices in the field of women’s health. Its products include mammography equipment, breast biopsy systems, and bone densitometry equipment.
7. Hologic is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. FISCHER

8. At the time of the Acquisition, Fischer wa0 rgBT268.0800 312.0000 TD/F14 12.0000 Tf-0.0600 Tc0.1800 T

VII. MARKET STRUCTURE

16. Pursuant to the Acquisition, the only two significant suppliers of prone SBBSs in the United States merged, leaving Hologic as a virtual monopolist in the \$40 million market. Prior to the Acquisition, Hologic and Fischer had substantially equivalent shares of the market and directly competed on price, service and product innovation. The only other firm that sells a prone SBBS is Giotto USA. Giotto has had minimal sales since its product's introduction to the U.S. market three years ago. Giotto's sales are unlikely to increase sufficiently to restore the lost competition, as Giotto lacks the infrastructure, track record, product acceptance, and resources to expand U.S. sales significantly. As a result, the transaction significantly increases Hologic's market power.

SBBS market by acquiring a license from Fischer in settlement of patent litigation.

20. In addition to the intellectual property barriers to entry, potential entrants must contend with the research, development, and regulatory hurdles that companies seeking to market medical devices typically face. After developing and obtaining FDA approval for a prone SBBS product, a new entrant would face the difficult task of gaining market approval without a proven product or track record, developing manufacturing capability, recruiting and training a sales force, and establishing the infrastructure necessary to provide service for the life of the product.

X. VIOLATIONS CHARGED

21. The allegations contained in paragraphs 1 through 20 are repeated and realleged as though fully set forth here.
22. The effect of the Acquisition may be substantially to lessen competition or tend to create a monopoly 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 WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C. this __ day of _____, 2006.

By the Commission.

Donald S. Clark
Secretary

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