ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of Agilent Technologies, Inc., File No. 091-0135

I. Introduction

The Federal Trade Commission ("Commission") has accepted from Agilent Technologies, Inc. ("Agilent"), subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement"), which is designed to remedy the anticompetitive effects resulting from Agilent's proposed acquisition of Varian, Inc. ("Varian"). Under the terms of the Consent Agreement, Agilent will: (1) divest the assets of its Micro Gas Chromatography ("Micro GC") instruments business to Inficon Group ("Inficon"), a subsidiary of Inficon Holding AG; and (2) divest the assets of Varian's Triple Quadrupole Gas Chromatography-Mass Spectrometry ("3Q GC-MS") and Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") instruments businesses to Bruker Corp. ("Bruker"), within ten days of closing its acquisition of Varian.

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

Pursuant to an Agreement and Plan of Merger dated July 26, 2009, Agilent plans to acquire Varian for approximately $1.5 billion. 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 lessening competition in the markets for Micro GC, 3Q GC-MS and ICP-MS instruments ("the Products").

II. The Parties

Agilent, headquartered in Santa Clara, California, is a global supplier of scientific measurement instruments and related products and services. Agilent's broad range of products and services includes equipment used to test cell phones and communications equipment, machines that determine the contents of human tissue and environmental samples, and microarrays that are used to analyze gene expression, which are commonly used in cancer research.

Varian is headquartered in Palo Alto, California, and supplies scientific instruments and chemical analysis technologies to customers worldwide. Varian's products, which employ various analytical techniques to test samples of many types, are used by academic researchers, forensics laboratories, food safety and agriculture laboratories, pharmaceutical companies, and chemical and oil and gas firms. Varian also offers a line of vacuum pumps, which are important components in a variety of scientific instruments and industrial processes.

III. The Products and Structure of the Markets

Micro GCs are portable gas chromatography instruments that are used primarily in the oil, mining, and waste disposal industries to detect the presence of toxins in the air or in emissions. Micro GC instruments are designed for field use and, accordingly, must be small and light enough to be portable and sufficiently robust to withstand travel and use in a variety of environments. Because Micro GC customers strongly value portability, they would not switch to any other analytical technique or product if the price of Micro GCs were to increase by five to ten percent. In the United States, Agilent and Varian are the sole competitors in the market for Micro GC instruments. Agilent and Varian account for approximately 75 percent and 25 percent of the market by revenue, respectively, and directly compete for sales on the basis of price, service, and product innovation.

3Q GC-MS instruments combine a front-end gas chromatograph with a triple quadrupole mass spectrometer. 3Q GC-MSs offer extraordinarily high sensitivity and are used to identify and quantify trace amounts of substances in a wide variety of samples, such as performance-enhancing drugs in blood and pesticides in food. Less sensitive GC-MSs are widely available, and substantially less expensive, but they are not substitutes for 3Q GC-MSs because they lack the capability to detect compounds at very low concentrations and cannot differentiate among structurally-similar compounds. Where the significantly greater performance of a 3Q GC-MS is required, customers would not switch to other instruments or technologies even if the price of 3Q GC-MSs increased by five to ten percent. In the United States, there are four competitors supp

IV. Entry

Neither new entry

Inficon possesses the resources and capa