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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of **AGILENT TECHNOLOGIES, INC.,** **a corporation.**	))))))	**Docket No. C-**

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Agilent Technologies, Inc. ("Agilent"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Varian, Inc. ("Varian"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Agilent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 5301 Stevens Creek Blvd., Santa Clara, California 95051.

2. Respondent is engaged in, among other things, the production and sale of micro gas chromatography instruments, triple quadrupole gas chromatography-mass spectrometry instruments, and inductively coupled plasma-mass spectrometry instruments.

3. Respondent 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.

II. THE ACQUIRED COMPANY

4. Varian is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 3120 Hansen Way, Palo Alto, California 94304.

5. Varian is engaged in, among other things, the production and sale of micro gas chromatography instruments, triple quadrupole gas chromatography-mass spectrometry instruments, and inductively coupled plasma-mass spectrometry instruments.

III. PROPOSED ACQUISITION

6. Pursuant to an Agreement and Plan of Merger (the "Agreement") dated July 26, 2009, Agilent announced its intention to acquire the stock of Varian for $1.5 billion (the "Acquisition").

IV. RELEVANT MARKETS

7. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the manufacture and sale of the following products: (a) micro gas chromatography instruments; (b) triple quadrupole gas chromatography-mass spectrometry instruments; and (c) inductively coupled plasma-mass spectrometry instruments.

a. Micro gas chromatography instruments are portable gas chromatography instruments that are used primarily in the oil, mining, and waste disposal industries to detect the presence of certain toxins in air or in emissions. Unlike other types of gas chromatography equipment, these instruments are designed to be used in the field, and therefore are small and light enough to be portable, and sufficiently robust to withstand travel and field use in a variety of environments.

b. Triple quadrupole gas chromatography-mass spectrometry instruments combine a gas chromatograph with a triple quadrupole mass spectrometer. They are extraordinarily sensitive devices that provide molecular-level analysis of the components of a sample and are commonly used to test for pesticides in food, drugs in blood, and environmental contaminants, such as lead, in drinking water.

c. Inductively coupled plasma-mass spectrometry instruments combine inductively coupled plasma technology and mass spectrometry technology and are used for the analysis of inorganic materials. The most common application for the instrument is testing water samples, such as drinking, ground, waste, and seawater, for the presence of toxic metals, like arsenic, mercury, or lead.

8. For the purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce. To compete in the relevant product markets in the United States, a firm must establish a local sales force, service infrastructure, and reputation among purchasers in the relevant product markets.

V. STRUCTURE OF THE MARKETS

9. In the United States, Agilent and Varian are the sole competitors in the $6.8 million market for micro gas chromatography instruments. Agilent and Varian account for approximately 75 percent and 25 percent of the market, respectively, and directly compete on price, service, and product innovation. As a result, the Acquisition would significantly increase concentration and create a monopoly.

10. The market for triple quadrupole gas chromatography-mass spectrometry instruments is highly concentrated as measured by the Herfindahl-Hirschman Index ("HHI"). In the United States, there are only four suppliers of triple quadrupole gas chromatography-mass spectrometry instruments. The Acquisition would reduce the number of suppliers from four to three, leaving Agilent significantly larger than any of its remaining competitors in this $7 million market. Post-acquisition, the combined Agilent and Varian would have in excess of a 48 percent share of the U.S. market. The other two competitors, Thermo Fisher Scientific, Inc. and Waters Corp., have market shares of approximately 36 percent and 16 percent, respectively. The post-merger HHI would be 3,882 points and the acquisition will increase the HHI level by 1,157 points. This market concentration level far exceeds the range in which a proposed acquisition is likely to create market power or enhance the likelihood that it can be exercised successfully.

11. The market for inductively coupled plasma-mass spectrometry instruments is highly concentrated as measured by the HHI. In the United States, there are only four suppliers of inductively coupled plasma-mass spectrometry instruments. Agilent accounts for 40 percent of the $26 million market for inductively coupled plasma-mass spectrometry instruments and the Acquisition would entrench Agilent further as the dominant supplier of inductively coupled plasma-mass spectrometry instruments in the United States and increase concentration significantly. Post-acquisition, the combined Agilent and Varian would have in excess of a 48 percent share of the U.S. market. The other two competitors, Thermo and PerkinElmer, Inc., have market shares of approximately 14 percent and 37 percent, respectively. The post-merger HHI would be 3,948 points and the acquisition will increase the HHI level by 705 points. This market concentration level far exceeds the range in which a proposed acquisition is likely to create market power or enhance the likelihood that it can be exercised successfully.

VI. ENTRY CONDITIONS

12. Neither new entry nor entry by existing suppliers from outside the United States into the relevant product markets described in Paragraph 6 sufficient to deter or counteract the anticompetitive effects of the proposed acquisition is likely to occur within two years. Entry into the relevant product markets *de novo* requires a significant amount of time and resources. In order to be successful, a new entrant must develop technology that is at least equivalent to the

incumbent technologies in terms of performance and reliability. A new entrant must also develop around or obtain licenses for existing intellectual property. Finally, a new entrant must establish a U.S. sales force, support, capability, and reputation for robust and reliable instrument performance. Companies selling relevant products outside of the United States face the same reputation, sales, and service barriers as new entrants. Therefore, entry into the relevant line of commerce would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition.

VII. EFFECTS OF THE ACQUISITION

13. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant market 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 the following ways, among others:

a. by eliminating actual, direct, and substantial competition between Agilent and Varian for the sale of each of the relevant products in the United States;

b. by increasing the likelihood that Respondent would unilaterally exercise market power in the U.S. markets for each of the relevant products;

c. by increasing the likelihood that U.S. customers would be forced to pay higher prices for each of the relevant products;

d. by increasing the likelihood that consumers would experience lower levels of innovation and service in the U.S. markets for each of the relevant products; and

e. by increasing the likelihood and degree of coordinated interaction between or among suppliers in the U.S. markets for each of the relevant products.

VIII. VIOLATIONS CHARGED

14. The Agreement described in Paragraph 5 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

15. The Acquisition described in Paragraph 5, if consummated, would constitute a 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _______ day of ___________, 2010, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: