

**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 supplying 3Q GC-MS instruments. Post-acquisition, the combined Agilent and Varian would have in excess of a 48 percent share of the U.S. market by revenue. The other two competitors, Thermo Fisher Scientific, Inc. (“Thermo”) and Waters Corp., have market shares of approximately 36 percent and 16 percent, respectively.

ICP-MS instruments combine inductively coupled plasma technology and mass spectrometry technology and are used for the analysis of inorganic materials. The most common application for ICP-MS is testing water samples, such as drinking, ground or waste water, for the presence of toxic metals, like arsenic, mercury, or lead. ICP-MS is the only technology approved by the Environmental Protection Agency for testing drinking water. Because customers require the sensitivity provided by ICP-MS, and because many customers perform tests pursuant to regulatory guidelines, they would not switch to any other technique or device if the price of ICP-MS instruments were to increase by five to ten percent. In the United States, there are only four suppliers of ICP-MS instruments. Agilent accounts for 40 percent of the ICP-MS market by revenue, and a 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 relevant geographic area in which to evaluate the markets for Micro GC, 3Q GC-MS, and ICP-MS instruments is the United States. Because Micro GC, 3Q GC-MS, and ICP-MS customers require local sales, service, and support, a supplier that lacks the local infrastructure necessary to provide these services is not a viable alternative for U.S. customers.

IV. Entry

Neither new entry nor repositioning and expansion sufficient to deter or counteract the anticompetitive effects of the proposed acquisition is likely to occur within two years. A new entrant to the Micro GC, 3Q GC-MS, or ICP-MS instrument markets would face significant barriers to entry. A new entrant would have to design, develop, and test a product, and would have to establish a service and support infrastructure in the United States. Perhaps most importantly, a new entrant would have to develop a reputation for quality and reliability, and it would take at least several years to acquire a reputation on par with the current Micro GC, 3Q GC-MS, and ICP-MS suppliers. Accordingly, new entry by a domestic or foreign firm would not be timely, likely, or sufficient to counteract the anticompetitive effects that would arise as a result of the acquisition.

V. Effects of the Acquisition

Agilent and Varian are the only two competitors in the market for Micro GC instruments. By creating a monopoly and eliminating the substantial competition between Agilent and Varian, the proposed acquisition would cause the purchasers of Micro GC instruments to pay higher prices and experience reduced levels of service and slower innovation rates.

With only four suppliers, the market for 3Q GC-MS instruments is highly concentrated. 3Q GC-MSs are generally purchased through a competitive evaluation process, which fosters competition for features, reliability, performance, price, and service. Agilent and Varian's 3Q GC-MSs are positioned similarly in terms of their features, price, and performance. The elimination of the direct competition between the Agilent and Varian 3Q GC-MS products would allow Agilent to increase prices, slow the pace of innovation, and/or decrease service levels. In addition, the fact that there would be only three suppliers after the proposed acquisition leads to an increased likelihood of coordination among the remaining competitors.

The market for ICP-MS instruments is also highly concentrated, and Agilent's acquisition of Varian would leave only three suppliers. The ICP-MS instruments of the various suppliers compete on the basis of reliability, price, product features, performance, and service. Because Agilent and Varian directly compete with each other for many sales, and because Varian is frequently the low-priced competitor, Agilent would have a strong post-acquisition incentive to increase ICP-MS prices. The transaction would also facilitate coordination among the three remaining firms.

VI. The Consent Agreement

The proposed Consent Agreement eliminates the competitive concerns raised by Agilent's proposed acquisition of Varian by requiring the divestiture of Agilent's assets relating to the manufacture and sale of Micro GC instruments and Varian's assets relating to the manufacture and sale of 3Q GC-MS and ICP-MS instruments. Agilent and Varian have reached agreements to sell the Micro GC assets to Inficon and the 3Q GC-MS and ICP-MS assets to Bruker, within ten days of closing the acquisition.

Inficon possesses the resources and capability to acquire the Micro GC assets and replace Agilent as an effective competitor in the Micro GC market. Inficon, headquartered in Switzerland, manufactures analytical instruments for gas analysis, measurement, and control. Inficon currently supplies several products complementary to Micro GC instruments, including portable GC-MS analyzers. Inficon has an existing worldwide infrastructure for the marketing and sales of its analyzers, and therefore is well-positioned to replace the competition that will be lost as a result of the proposed transaction.

Headquartered in Billerica, Massachusetts, Bruker is a global provider of life-sciences scientific instruments, as well as solutions for molecular and materials research and industrial and applied analysis. Bruker's acquisition of the Varian 3Q GC-MS and ICP-MS product lines will complement Bruker's existing strengths in the analytical instruments market. Bruker manufactures a variety of high-performance mass spectrometry instruments, including product lines adjacent to the 3Q GC-MS and ICP-MS businesses. As a result, Bruker has a significant existing global infrastructure that will enable it to quickly support additional business expansion and replace the loss of competition posed by Agilent's acquisition of Varian.

Pursuant to the Consent Agreement, Inficon will receive the assets necessary to replicate Agilent's Micro GC instrument business, and Bruker will receive the assets necessary to replicate Varian's 3Q GC-MS and ICP-MS instrument businesses. In addition to ensuring that the employees of the relevant businesses will continue their employment with the acquirers, the Consent Agreement requires Agilent to provide Inficon and Bruker with access to additional Agilent employees who may be needed to facilitate the transition of the assets associated with each of the Products. The Consent Agreement also requires Agilent to transfer all relevant intellectual property and all contracts and confidential business information associated with each of the Products. Combined, these provisions ensure that Inficon and Bruker fully and immediately restore the competition that will be eliminated by the acquisition.

The Commission may appoint an interim monitor to oversee the divestiture of the Products at any time after the Consent Agreement has been signed. In order to ensure that the Commission remains informed about the status of the proposed divestitures, the proposed Consent Agreement requires the parties to file periodic reports with the Commission until the divestiture is accomplished. If the Commission determines that Agilent has not fully complied with its obligations under the Decision and Order within ten days after the date the Decision and Order becomes final, the Commission may appoint a divestiture trustee to divest the Micro GC, 3Q GC-MS, and ICP-MS assets to a Commission-approved acquirer.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.