

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill
 Maureen K. Ohlhausen

In the Matter of

Corning Incorporated
a corporation.

)
)
)
)
)
)

Docket No. C-4380

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Corning Incorporated (“Corning”), a corporation subject to the jurisdiction of the Commission, has entered into an agreement to acquire substantially all of the assets of Becton, Dickinson & Company’s Discovery Labware (“BDDL”) division, a company subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and that such 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, 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 Corning is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of New York, with its office and principal place of business located at One Riverfront Plaza, Corning, New York, 14831. Respondent Corning is engaged in the research, development and production of tissue culture treated (“TCT”) flasks, plates, and dishes used in cell culture.

2. Respondent Corning 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 company whose business is in or affects commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE ACQUIRED COMPANY

3. Becton, Dickinson & Company is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of New Jersey, with its office and principal place of business located at 1 Becton Drive, Franklin Lakes, New Jersey. BDDL's office and principal place of business is Two Oak Park Drive, Bedford, Massachusetts. Becton, Dickinson & Company through its Discovery Labware division is engaged in the research, development and production of TCT flasks, plates, and dishes used in cell culture.

4. Becton, Dickinson & Company 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 company whose business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED ACQUISITION

5. Pursuant to an Asset Purchase Agreement ("Acquisition Agreement") dated April 10, 2012, Corning proposes to acquire all nearly all of the assets of BDDL (the "Acquisition").

IV. THE RELEVANT MARKETS

6. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the production and sale of:

- a. TCT cell culture multi-well plates;
- b. TCT cell culture flasks; and
- c. TCT cell culture dishes.

7. For the purposes of this complaint, North America is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce.

V. THE STRUCTURE OF THE MARKETS

8. TCT cell culture multi-well plates, flasks and dishes are plastic containers that have been specially treated to promote cell growth. Scientific researchers use these products as surfaces or containers upon which to cultivate cells. Each type of cell culture vessel has a distinct application, and purchasers would not switch between types of cell culture vessels, or to any other product, if faced with a small but significant and non-transitory increase in the price of TCT cell culture multi-well plates, flasks or dishes.

9. The markets for TCT cell culture multi-well plates, flasks and dishes are highly concentrated. Corning and BDDL are the two leading suppliers in each of these markets. Although other firms such as Thermo Fisher and Greiner Bio-One participate in this market, their market shares are substantially smaller than those of either Corning or BDDL. The proposed acquisition would significantly increase concentration in the markets for TCT cell culture multi-well plates, flasks and dishes.

VI. ENTRY CONDITIONS

10. Entry into the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. Entry would not take place in a timely manner because of the significant time and expense required to develop manufacturing capabilities and develop a reputation for product quality among research scientists.

VII. EFFECTS OF THE ACQUISITION

11. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets 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, by eliminating actual, direct, and substantial competition between Corning and BDDL in the markets for TCT cell culture multi-well plates, flasks, and dishes, thereby: (1) increasing the likelihood that Corning would unilaterally exercise market power in these markets; and (2) increasing the likelihood that consumers would be forced to pay higher prices for these products.

VIII. VIOLATIONS CHARGED

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

13. 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 twentieth day of December, 2012, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: