

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

COMMISSIONERS: **Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright**

_____)	
In the Matter of)	
)	
THERMO FISHER SCIENTIFIC INC.,)	Docket No. C-4431
a corporation.)	
)	
_____)	

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 Thermo Fisher Scientific Inc. ("Thermo Fisher"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Life Technologies Corp. ("Life"), a corporation 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. THE RESPONDENT

1. Respondent Thermo Fisher is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business at 81 Wyman Street, Waltham, Massachusetts 02454.
2. Respondent is engaged in, among other things, the production and sale of cell culture media, cell culture sera, and siRNA reagents, or small/short interfering RNA reagents.
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. Life is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its headquarters and principal place of business at 5781 Van Allen Way, Carlsbad, California 92008.

5. Life is engaged in, among other things, the production and sale of cell culture media, cell culture sera, and siRNA reagents.

6. Life 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. THE PROPOSED ACQUISITION

7. Under the terms of an Agreement and Plan of Merger (the "Agreement") dated April 14, 2013, Respondent Thermo Fisher proposes to acquire all of the voting securities of Life for \$13.6 billion (the "Acquisition").

IV. THE RELEVANT PRODUCT MARKETS

8. 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) cell culture media, (b) cell culture sera, and (c) siRNA reagents.

- a. Cell culture media are mixtures of salts, sugars, amino acids, vitamins, ions, and trace elements that are used to support the growth of cells. Cell culture media are provided in liquid or powder form, and include, but are not limited to, process liquids, standard basal media, customized media, proprietary media, and chemically-defined media.
- b. Cell culture serum is an animal blood derivative that is used to propagate mammalian cell lines. Cell culture sera complement media by providing growth factors and other nutrients necessary for mammalian cells. Cell culture sera include, but are not limited to, fetal bovine sera, adult bovine sera, newborn calf sera, calf sera, equine sera, and porcine sera.
- c. siRNA reagents are used to study gene function by silencing gene expression and protein synthesis. Individual siRNA reagents are uniquely suited towards specific genes. Collections of siRNA reagents, or siRNA libraries, are used to target a gene family or for full genome screening in, among other things, drug development and disease treatment. The relevant product market includes siRNA libraries as well as individual siRNA reagents.

9. For the purposes of this Complaint, the relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce is no narrower than the United States and may be as broad as the entire world.

V. THE STRUCTURE OF THE MARKETS

10. The cell culture media market is highly concentrated currently, with only three main suppliers: Life, Thermo Fisher, and Sigma-Aldrich Corp. (“Sigma-Aldrich”). Combined, Thermo Fisher and Life would have more than a 50% share in the cell culture media market. Sigma-Aldrich, the next closest competitor, trails with a market share of approximately 25%. The balance of the cell culture media market is split among several smaller, less significant competitors. The Acquisition substantially increases concentration in the cell culture media market and reduces the number of major suppliers of cell culture media from three to two.

11. Thermo Fisher and Life are two of only three substantial competitors in the market for cell culture sera. Life has a market share in excess of 40%. Thermo Fisher’s market share is approximately 20%. Sigma-Aldrich, the next largest competitor, has a market share of approximately 15%. Although other firms participate in this market, their market shares are considerably smaller. As a result, the Acquisition would substantially increase concentration in the cell culture sera market by combining the two most significant competitors and reducing the number of major suppliers from three to two.

12. Thermo Fisher and Life are two of only four significant competitors in the market for siRNA reagents. This is in large part because only these four firms have licenses for critical intellectual property necessary to compete effectively in this market. Thermo Fisher and Life offer the most advanced lines of siRNA reagents and are the only suppliers to offer a portfolio of siRNA reagents for the full human genome. The other license holders, Sigma-Aldrich and Qiagen N.V., do not offer as advanced or as many siRNA reagents as Thermo Fisher and Life. Combined, Thermo Fisher and Life would have a market share of more than 50% for individual siRNA reagents and greater than 90% for siRNA libraries. As a result, the Acquisition would substantially increase concentration in the market for siRNA reagents.

VI. ENTRY CONDITIONS

13. Sufficient and timely entry into the relevant product markets described in Paragraph 8 is unlikely to deter or counteract the anticompetitive effects of the Acquisition. Entry into each of these relevant product markets requires a significant amount of time and resources. In each relevant product market, a firm must develop products with high levels of performance and reliability to establish the brand recognition necessary to compete effectively. A potential entrant must also develop around or obtain licenses for existing intellectual property. Moreover, entry into the cell culture media and sera markets requires substantial upfront investment to build sufficient capacity to supply the needs of large industrial customers, while in the case of cell culture sera, a potential entrant must competitively bid against established market participants for access to limited supplies of raw sera. Finally, a potential entrant must establish a U.S. sales force, offering high-quality technical support.

VII. THE EFFECTS OF THE ACQUISITION

14. The effects of the Acquisition, if consummated, would likely be to substantially lessen competition and to tend to create a monopoly in each 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 Respondent Thermo Fisher and Life and reducing the number of competitors for the sale of each relevant product;
- b. by increasing the likelihood that Respondent Thermo Fisher would unilaterally exercise market power for each relevant product;
- c. by increasing the likelihood and degree of coordinated interaction between or among suppliers for each relevant product;
- d. by increasing the likelihood that consumers would experience lower levels of quality and service for each relevant product; and
- e. by increasing the likelihood that customers would be forced to pay higher prices for each relevant product.

VIII. VIOLATIONS CHARGED

15. The Agreement described in Paragraph 7 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

16. The Acquisition described in Paragraph 7, 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 thirtieth day of January, 2014, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: