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May 1, 2018

Federal Trade Commission  
Office of the Secretary, Room H-113 (Annex B)  
600 Pennsylvania Avenue NW  
Washington, DC 20580

Dear Commissioners of the United States Federal Trade Commission:

We represent Thermo Fisher Scientific Inc. (“Thermo Fisher”). Thank you for the opportunity to comment on The Application For Commission Approval of Proposed Cross-License of Certain Intellectual Property Between Agilent Technologies, Inc. (“Agilent”) and Analytik Jena AG (“Analytik”) (the “Petition”) on behalf of Thermo Fisher. Thermo Fisher assumes for the purposes of this comment that the facts as stated in the Petition are accurate.

Efficiency is a key goal of the competitive process, and efficient outcomes benefit consumers, particularly in markets such as those in the life sciences industry where efficiency gains tend to be shared with end users. According to the Petition, the proposed cross-license would enhance overall efficiency by reducing the costs of both Agilent and Analytik. If the cross-license is permitted, both companies will be able to spread the costs of the solid-state RF generators (“SSRF generator”) used in their respective inductively coupled plasma-mass spectrometry instrument (“ICP-MS”) and inductively coupled plasma-optical emission spectrometry instrument (“ICP-OES”) businesses across their entire ICP-MS and ICP-OES portfolios rather than inefficiently using one type of SSRF generator for ICP-MS and another type of SSRF generator in ICP-OES.

The Petition indicates that the current inefficiencies in SSRF generator production for Agilent and Analytik are a function of the allocation of IP rights flowing from the Commission’s June 2010 Decision and Order regarding Agilent’s acquisition of Varian, Inc. (“Varian”)(the “Commission Order”). Under the Commission Order, Analytik’s predecessor was assigned IP rights to an innovative SSRF generator design in the ICP-MS field and Agilent held the rights to the same design in the ICP-OES field.

While this allocation of IP rights may have furthered the original purposes of the Commission Order, it is appropriate for the Commission to consider current circumstances in analyzing proposed modifications to consent decrees, particularly in life sciences markets where competitive conditions change over time in response to constantly evolving demands from the scientific community. The Petition posits that both companies will be more efficient with the proposed cross-license than without it and that Analytik, the current owner of the Varian assets divested pursuant to the Commission Order, initially proposed the cross-license, presumably on the view that it would enhance its cost structure and competitive position. Insofar as the Petition does not raise countervailing competitive concerns or violate other legal rights, such as third

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party contract or IP rights, Thermo Fisher believes that these facts support the granting of the Petition.

Sincerely,

A handwritten signature in blue ink, appearing to read "John D. Harkrider", is written over a light blue horizontal line.

John D. Harkrider