

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. Agfa is a corporation organized, existing and doing business under and by virtue of the laws of Belgium, with its offices and principal place of business located at Septestraat 27, B-2640 Mortsel, Belgium. Agfa's principal subsidiary in the United States is located at 100 Challenger Road, Ridgefield Park, New Jersey 07660.

5. Agfa is engaged in, among other things, the research, development, manufacture, and sale of ultrasonic non-destructive testing equipment, including portable flaw detectors, corrosion thickness gages and precision thickness gages.

6. Agfa is, and at all times 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 ACQUISITION

7. GE and Agfa entered into a stock and asset purchase agreement dated as of January 17, 2003 and amended as of September 19, 2003 (the "Purchase Agreement") whereby GE agreed to acquire certain assets of Agfa's non-destructive testing equipment business for approximately \$437 million in cash (the "Acquisition").

IV. THE RELEVANT MARKETS

8. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:

a. the research, development, manufacture, and sale of portable flaw detectors, a type of ultrasonic non-destructive testing equipment used to detect and characterize internal defects and anomalies in materials;

b. the research, development, manufacture, and sale of corrosion thickness gages, a type of ultrasonic non-destructive testing equipment used to measure the remaining wall thickness of parts that are subject to corrosion or erosion; and

c. the research, development, manufacture, and sale of precision thickness gages, a type of ultrasonic non-destructive testing equipment used to determine the thickness of smooth, thin materials.

9. For the purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition on the relevant lines of commerce for portable flaw detectors, corrosion thickness gages, and precision thickness gages. Foreign suppliers of these products that have not established the necessary service and support networks, brand reputation and customer acceptance in the U.S., are not effective competitors for U.S. customers.

V. THE STRUCTURE OF THE MARKETS

10. The U.S. market for the research, development, manufacture, and sale of portable flaw detectors is highly concentrated as measured by the Herfindahl-Hirschman Index (“HHI”). GE and Agfa are the two leading suppliers by far of portable flaw detectors in the U.S. The Acquisition would significantly increase concentration in the U.S. market for the research, development, manufacture, and sale of portable flaw detectors. After the Acquisition, GE would have a market share of over 70% in this market.

11. The U.S. market for the research, development, manufacture, and sale of corrosion thickness gages is highly concentrated as measured by the HHI. GE and Agfa are the two leading suppliers by far of corrosion thickness gages in the U.S. The Acquisition would significantly increase concentration in the U.S. market for the research, development, manufacture, and sale of corrosion thickness gages. After the Acquisition, GE would have a market share of over 70% in this market.

12. The U.S. market for the research, development, manufacture, and sale of precision thickness gages is highly concentrated as measured by the HHI. GE and Agfa are the two leading suppliers by far of precision thickness gages in the U.S. The Acquisition would significantly increase concentration in the U.S. market for the research, development, manufacture, and sale of precision thickness gages. After the Acquisition, GE would have a market share of over 70% in this market.

VI. ENTRY CONDITIONS

13. Entry into each of the relevant markets is a difficult process because of, among other things, the time and cost associated with (a) researching and developing portable flaw detectors, corrosion thickness gages and precision thickness gages; (b) establishing a service and support network; and (c) developing the necessary brand reputation and customer acceptance in each of these markets.

14. New entry into any of the relevant markets sufficient to deter or counteract the anticompetitive effects described in Paragraph 17 is unlikely to occur because the costs of entering each of the relevant markets are high relative to the potential sales opportunities available to an entrant.

15. New entry into any of the relevant markets sufficient to deter or counteract the anticompetitive effects described in Paragraph 17 would not occur in a timely manner because it would take over two years for an entrant to accomplish the steps required for entry and to achieve a significant market impact.

16. Expansion by smaller competitors in any of the relevant markets sufficient to deter or counteract the anticompetitive effects described in Paragraph 17 is unlikely to occur in a timely manner because of, among other things, the time and cost associated with (a) establishing an effective service and support network; and (b) developing the necessary brand reputation and customer acceptance in each of these markets.

VII. EFFECTS OF THE ACQUISITION

17. The effects of the Acquisition, if consummated, may be substantially to 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, in the following ways, among others:

a. by eliminating actual, direct, and substantial competition between GE and Agfa in the U.S. market for the research, development, manufacture, and sale of portable flaw detectors, thereby: (i) increasing the likelihood that GE would unilaterally exercise market power in this market; (ii) reducing GE's incentive to pursue further innovation in this market; and (iii) increasing the likelihood that portable flaw detector customers would be forced to pay higher prices;

b. by eliminating actual, direct, and substantial competition between GE and Agfa in the U.S. market for the research, development, manufacture, and sale of corrosion thickness gages, thereby: (i) increasing the likelihood that GE would unilaterally exercise market power in this market; (ii) reducing GE's incentive to pursue further innovation in this market; and (iii) increasing the likelihood that corrosion thickness gage customers would be forced to pay higher prices; and

c. by eliminating actual, direct, and substantial competition between GE and Agfa in the U.S. market for the research, development, manufacture, and sale of precision thickness gages, thereby: (i) increasing the likelihood that GE would unilaterally exercise market power in this market; (ii) reducing GE's incentive to pursue further innovation in this market;

and (iii) increasing the likelihood that precision thickness gage customers would be forced to pay higher prices.

VIII. VIOLATIONS CHARGED

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

19. 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 eighteenth day of December, 2003, issues its Complaint against said Respondent.

By the Commission, Chairman Muris not participating and Commissioner Harbour recused.

Donald S. Clark
Secretary

SEAL: