

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

COMMISSIONERS: **Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch**

_____)	
In the Matter of)	
_____)	
THERMO ELECTRON CORPORATION,)	Docket No. C-4170
a corporation)	
_____)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (hereinafter "Commission"), having reason to believe that Respondent Thermo Electron Corporation, a corporation subject to the jurisdiction of the Commission, has agreed to acquire Fisher Scientific International, Inc., a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission 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 Thermo Electron Corporation ("Thermo") is a for-profit corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its offices and principal place of business located at 81 Wyman Street, Waltham, Massachusetts 02454.
2. Thermo, among other things, is engaged in the development, manufacture, and marketing of a broad range of analytical equipment and laboratory instrumentation. Thermo employs approximately 11,000 persons and it achieved revenues of \$2.63 billion in 2005.
3. Thermo 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. Fisher Scientific International, Inc. (“Fisher”) is a for-profit corporation organized, existing and doing business under and by the virtue of the laws of the State of Delaware, with its principal place of business located at Liberty Lane, Hampton, New Hampshire, 03842.
5. Fisher, among other things, is engaged in the manufacture, development, marketing, and distribution of laboratory equipment and health care products. Fisher also provides a variety of services to laboratories and health care providers. Fisher currently has approximately 19,500 employees and its 2005 revenues were \$5.6 billion.

III. THE PROPOSED ACQUISITION

6. On May 7, 2006, Thermo entered into an Agreement and Plan of Merger with Fisher to acquire Fisher, for approximately \$12.8 billion in stock and assumed debt (the “Acquisition”).

IV. THE RELEVANT MARKET

7. For the purposes of this Complaint, the relevant product market in which to analyze the effects of the Acquisition is the research, development, production, sale, and service of high-performance centrifugal vacuum evaporators (“CVEs”). CVEs apply a combination of heat, vacuum, and centrifugal force to remove solvents from laboratory samples, evaporating off the solvents while preserving and drying the samples for storage, further analysis, characterization, or experimentation. High-performance CVEs offer advanced features, including high-throughput capability, compatibility with corrosive and aggressive solvents, and sophisticated control, programming, and monitoring capabilities, that are considered useful and necessary by high-performance CVE purchasers. Other types of laboratory evaporation equipment, such as low-performance CVEs, lyophilizers (*i.e.* freeze drying equipment), and nitrogen blowdown systems, do not offer these capabilities. A small but significant and non-transitory price increase would not significantly reduce the demand for high-performance CVEs.

V. RELEVANT GEOGRAPHIC MARKET

8. For the purposes of this Complaint, the relevant geographic market in which to assess the effects of the Acquisition is the United States. To compete in the United States high-performance CVE market, a firm must establish a local sales force, service infrastructure, and reputation among high-performance CVE purchasers. In addition, the firm's product offering must not infringe any valid U.S. high-performance CVE patents.

VI. MARKET STRUCTURE

9. If consummated, the Acquisition would consolidate the only two significant suppliers of high-performance CVEs in the United States, leaving Thermo as a virtual monopolist in the approximately \$10 million market. Thermo and Fisher account for approximately 30 percent and 70 percent of the market, respectively, and directly compete on price, service, and product innovation. The only other firm that sells high-performance CVEs, Martin Christ GmbH ("Martin Christ"), has had minimal sales in the United States during the last three years and its sales are unlikely to increase sufficiently to restore the lost competition. As a result, the proposed Acquisition would significantly increase concentration and result in a highly concentrated market.

VII. EFFECTS OF THE ACQUISITION

10. As the only significant suppliers of high-performance CVEs in the United States, Thermo and Fisher compete head-to-head. The Acquisition, if consummated, will have the effect of substantially lessening competition and tending to create a monopoly in the 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. eliminating Fisher as the only other significant competitor in the market for high-performance CVEs;
 - b. eliminating actual, direct, and substantial competition between Thermo and Fisher, which currently compete directly on price, service, and product innovation as next-best substitutes;
 - c. increasing the ability of Thermo to raise prices unilaterally of high-performance CVEs in the United States; and
 - d. reducing Thermo's incentive to invest in high-performance CVE innovations and service improvements, thereby adversely affecting product innovation and service.

VIII. ENTRY CONDITIONS

11. To enter the high-performance CVE market and achieve significant market impact, a firm must first develop a product offering comparable functionality and performance to the high-performance CVEs offered by the incumbent firms without violating any existing patents. After developing a viable product line, an entrant would face the difficult tasks of developing manufacturing capabilities, gaining market acceptance without a proven product or track record, recruiting and training a sales force, and establishing the infrastructure necessary to provide service for the life of the product. In addition, the small size of the high-performance CVE market, and correspondingly limited profit opportunities available to a potential entrant, lessen the likelihood of entry into the high-performance CVE market.
12. New entry into the market for the production and sale of high-performance CVEs sufficient to deter or counteract the anticompetitive effects described in Paragraph 10 is unlikely to occur, and would not occur in a timely manner because it would take over two years to enter and achieve significant market impact.

IX. VIOLATIONS CHARGED

13. The allegations contained in paragraphs 1 through 12 are repeated and realleged as though fully set forth here.
14. The Agreement and Plan of Merger described in paragraph 6 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.
15. The Acquisition, 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.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C. this seventeenth day of October, 2006.

By the Commission.

Donald S. Clark
Secretary

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