

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

<p>In the Matter of</p> <p>DANAHER CORPORATION, a corporation;</p> <p>and</p> <p>MDS, INC., a corporation.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. C-4283</p>
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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 Respondent Danaher Corporation (“Danaher”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire MDS Analytical Technologies (US) Inc. (“MDS Analytical Technologies”), a subsidiary of Respondent MDS, Inc. (“MDS”), 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. RESPONDENTS

1. Respondent Danaher is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 2099 Pennsylvania Avenue, N.W., 12th Floor, Washington, DC 20006.

2. Respondent MDS is a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its headquarters address at 2810 Matheson Blvd., Suite 500, Mississauga, Ontario L4W4V9, Canada, and the offices of its United States subsidiary, MDS Analytical Technologies at 1311 Orleans Drive, Sunnyvale, CA 94089-1136.

3. Respondents are engaged in, among other things, the production and sale of laser microdissection devices.

4. Respondents are, and at all times relevant herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and are corporations 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. PROPOSED ACQUISITION

5. Pursuant to a Stock and Asset Purchase Agreement (the “Agreement”) dated September 2, 2009, Danaher announced its intention to acquire the stock and assets of MDS Analytical Technologies for \$650 million (the “Acquisition”).

III. RELEVANT MARKET

6. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is laser microdissection devices. Laser microdissection devices are used to separate small groups of cells from larger tissue samples in order to perform various types of downstream analyses. Although other techniques exist for separating cells, laser microdissection is the only technique that can reliably and precisely create pure cell samples.

7. For the purposes of this Complaint, the relevant geographic area in which to analyze the effects of the Acquisition on laser microdissection devices is no larger than North America. To compete in North America, a company must establish a solid reputation among North American customers, a regional sales force, and a regional service team that can quickly address customers’ repair and maintenance needs.

IV. STRUCTURE OF THE MARKET

8. The market for laser microdissection devices is highly concentrated as measured by the Herfindahl-Hirschman Index (“HHI”). In North America, there are only four suppliers of laser microdissection devices. The acquisition reduces the number of suppliers from four to three and combines Danaher and MDS, who many purchasers consider to be their preferred options for laser microdissection devices. Post-acquisition, the combined Danaher and MDS would have in excess of a 50 percent share of the North American market. The post-merger HHI would be 4,130 points and the acquisition will increase the HHI level by 1,277 points. This market concentration level far exceeds the range in which a proposed acquisition is likely to create market power or enhance the likelihood that it can be exercised successfully.

V. ENTRY CONDITIONS

9. Neither new entry nor entry by suppliers from outside North America sufficient to deter or counteract the anticompetitive effects of the proposed acquisition is likely to occur within two years. Developing laser microdissection products *de novo* requires a significant amount of time and resources. In order to be successful, a new entrant must develop technology that is at least equivalent to the incumbent technologies in terms of performance and reliability. A new entrant must also develop around or obtain licenses for existing intellectual property. Finally, a new entrant must engage thought leaders in the industry, ensure that articles are published using its technology, allow major institutions to evaluate its products, and establish a North American sales force as well as regional service and support. Even companies with existing laser microdissection products outside of North America face the same reputation, regional sales, and regional service barriers as new entrants. Therefore, entry into the relevant line of commerce would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition.

VI. EFFECTS OF THE ACQUISITION

10. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend 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. By eliminating actual, direct, and substantial competition between Respondents in the North American laser microdissection market;
- b. By increasing the likelihood that Respondents would unilaterally exercise market power in the North American laser microdissection market;
- c. By increasing the likelihood that North American consumers would be forced to pay higher prices for laser microdissection devices; and
- d. By increasing the likelihood that consumers would experience lower levels of innovation and service in the North American laser microdissection market.

VII. VIOLATIONS CHARGED

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

12. 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 twenty-seventh day of January, 2010, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: