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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JDS UNIPHASE CORPORATION and E-TEK DYNAMICS, INC., Defendants.	Civil Action No. C 00-2227 TEH Filed: June 22, 2000

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to prevent the proposed merger between defendant JDS Uniphase Corporation ("JDS") and defendant E-TEK Dynamics, Inc. ("E-TEK").

I.

NATURE OF THE ACTION

1. JDS and E-TEK are two of the leading manufacturers of components for fiber optic communication systems. JDS competes against E-TEK in the production and sale of dense wavelength division multiplexer and demultiplexer modules of 16 or fewer channels ("DWDMs").

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DWDMs are important components that increase the transmission capacity of fiber optic networks. These two manufacturers are each other's primary competitor in the production and sale of DWDMs.

2. Competition between JDS and E-TEK has benefited customers through higher output, lower prices, increased quality, and faster delivery time. The acquisition of E-TEK by JDS will substantially lessen competition in the production and sale of DWDMs in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The proposed acquisition will substantially increase the incentive and likelihood for the combined company to engage unilaterally in anticompetitive behavior, such as suppressing output and increasing prices of DWDMs.

II.

JURISDICTION AND VENUE

3. This action is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

4. Both JDS and E-TEK produce and sell DWDMs throughout the United States and the world, commercial activities that substantially affect, and are within the flow of, interstate commerce. The Court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to Section 12 and 15 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337.

5. The defendants transact business and are found within the Northern District of California. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

III.

THE DEFENDANTS AND TRANSACTION

6. JDS is a Delaware corporation, with its principal offices in San Jose, California. It designs, manufactures and distributes fiber optic products for communications applications. It is one of the world's largest independent suppliers of passive and active components for fiber optic communications networks. Passive components are composed of optical parts, while active components contain both optical and electronic parts. In 1999, JDS reported net sales of $282.8 million.

7. E-TEK is a Delaware corporation, with its principal offices in San Jose, California. It

designs, manufactures and distributes passive components for fiber optic communications networks. In 1999, E-TEK reported net sales of $172.7 million.

8. On January 17, 2000, JDS and E-TEK entered into an agreement whereby JDS will acquire E-TEK by exchanging the outstanding shares of E-TEK common stock for shares of JDS common stock. The transaction is valued at approximately $15 billion.

IV.

TRADE AND COMMERCE

A. Relevant Product Market

9. The volume of traffic carried by communications networks has increased rapidly over the last several years as a result of the explosion of bandwidth intensive applications such as Internet access, e-mail, remote access for computing, and electronic commerce. In the past, one fiber strand in a fiber optic communications network could carry only a single channel of voice or data traffic. Dense wavelength division multiplexers and demultiplexers separate the light signal in a fiber optic strand into multiple wavelengths, or colors, with each wavelength capable of carrying a separate communications channel. These multiplexers and demultiplexers enable the simultaneous transmission of multiple channels on a single strand of fiber, and thereby increase the total transmission capacity of the fiber optic network.

10. Thin film filters are a critical component part at the core of the DWDMs that are designed, manufactured and sold by JDS and E-TEK. Thin film filters are made in a vacuum coating chamber by depositing thin alternating layers of two dielectric materials on a polished glass substrate. When packaged with other parts into a DWDM, each thin film filter will transmit a certain wavelength of light and reflect or absorb other wavelengths.

11. The DWDM market is characterized by increasing demand and limited supply. No good substitutes exist for DWDMs purchased by suppliers of fiber optic communications networks. A small but significant increase in the price of DWDMs would not cause a significant number of customers to substitute other products.

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12. The production and sale of DWDMs is a relevant product market, or "line of

commerce," within the meaning of Section 7 of the Clayton Act.

B. Relevant Geographic Market

13. JDS and E-TEK produce and ship DWDMs to customers throughout the United States and the world. The world constitutes a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects and Entry

14. In 1999, world sales of DWDMs amounted to approximately $285 million. The JDS share of those sales was about $116 million, which constitutes 41% of the total sales. The share of E-TEK of the total sales was about $76 million, which constitutes 27% of the total sales.

15. The world market for DWDMs will become substantially more concentrated if JDS acquires E-TEK. Using a measure of concentration called the Herfindahl-Hirschman Index ("HHI") (defined and explained in Appendix A), the proposed transaction will increase the HHI in the world market for DWDMs by more than 2100 points to a post merger level of approximately 4700.

16. The merger between JDS and E-TEK will increase the defendants' combined share to 68% of the world market for DWDMs. This increase in market share will significantly enhance the merged firm's incentive and ability to exercise market power unilaterally by reducing its output and increasing its prices in the market for DWDMs. After the acquisition, defendants will have sufficient market share in the DWDM market to profit from the increase in DWDM prices caused by a unilateral reduction in output of DWDMs.

17. The potential for a significant increase in output of DWDMs by fringe firms and new entrants in response to anticompetitive output reductions or price increases by the merged firm is unlikely to be timely or sufficient to undermine such price increases. Competing firms are currently operating at or near capacity.

18. Effective entry in the DWDM market by new firms or expansion of existing competitors sufficient to constrain anticompetitive behavior by the merged firm must overcome time-consuming obstacles. A significant obstacle to effective entry or expansion is the availability of a sufficient supply of thin film filters. JDS has obtained virtually all of its supply of thin film filters from Optical Coating Laboratories, Inc., with which JDS established a strategic alliance in 1997 and

which it then acquired in February of 2000. E-TEK has obtained its supply of thin film filters primarily through supply agreements that have included the acquisition of rights of first refusal over output from thin film filter coating chambers located on the premises of merchant suppliers. E-TEK has also supplied itself with thin film filters produced at coating chambers located on company premises. Together, JDS and E-TEK in 1999 controlled approximately 80% of the world's thin film filter output.

19. It is a difficult and time consuming process to develop the capability of producing thin film filters cost effectively. Vacuum coating chambers and sophisticated optical monitoring systems to control the thin film deposition process must either be designed and constructed internally or be acquired from commercial vendors of such equipment. Once coating chambers are installed, a potentially lengthy trial and error development process is needed to approach the manufacturing yields of the leading incumbents.

20. In addition to these limitations on the supply of thin film filters, there are further obstacles to timely and sufficient new entry as a supplier of DWDMs. These obstacles include the need to design a DWDM that can be produced cost effectively in commercial volume and that meets specifications and is acceptable to customers for use in fiber optic communications networks. Customers commonly require rigorous and extensive testing over a substantial period of time before previously untested DWDMs are qualified and accepted for use in such networks. These obstacles are less significant for fringe firms already producing DWDMs.

21. In the world market for DWDMs, the proposed acquisition threatens substantial and serious harm to purchasers of DWDMs. By significantly increasing the market share of JDS in DWDMs, the proposed acquisition will provide the combined company with substantially enhanced control over the output and price of DWDMs. Furthermore, customers of DWDMs will lose the competition between JDS and E-TEK which has resulted in faster product delivery times and improvement in product quality.

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V.

VIOLATION ALLEGED

22. The effect of the proposed acquisition by JDS of E-TEK will be to lessen competition substantially in interstate trade and commerce in violation of Section 7 of the Clayton Act.

23. Unless restrained, the transaction will likely have the following effects, among others:

a. actual and potential competition between JDS and E-TEK will be eliminated;

b. competition generally in the production and sale of DWDMs will be lessened substantially; and

c. the output of DWDMs will be lower and the price for DWDMs higher than they otherwise would be.

VI.

REQUESTED RELIEF

WHEREFORE, Plaintiff requests:

1. That the proposed acquisition of E-TEK by JDS be adjudged and decreed to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;

2. That the defendants be permanently enjoined from and restrained from carrying out the acquisition agreement of January 17, 2000, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to combine the businesses or assets of JDS and E-TEK;

3. That the plaintiff be awarded its costs of this action; and

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4. That plaintiff receive such other and further relief as the case requires and the Court deems just and proper.

Dated this 22nd day of June 2000.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES

/s/
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Assistant Attorney General

/s/
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/s/
Constance K. Robinson
Director of Operations and Merger Enforcement

APPENDIX A

DEFINITION OF "HHI"

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.