

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

PACIFIC SCIENTIFIC COMPANY,

Defendant.

CASE NUMBER 1:96CV00165

JUDGE: James Robertson

DECK TYPE: Antitrust

DATE STAMP: 01/30/96

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant and alleges as follows:

1. The United States brings this antitrust case against the acquisition by Pacific Scientific Company ("Pacific Scientific") of all the outstanding shares of Met One, Inc. ("Met One").

2. Pacific Scientific and Met One compete vigorously in the manufacture and sale of drinking water particle counters; they are the leading competitors in this market. Drinking water particle counters are used by municipal water authorities to protect against contamination of public drinking water supplies by potentially deadly microorganisms. In 1993, 28 people in Milwaukee died as a result of drinking water contamination by one such microorganism --

Cryptosporidium. At the time of that tragedy, Milwaukee had not installed drinking water particle counters. Since 1993, Milwaukee has installed drinking

water particle counters.

3. If the combination of these two drinking water particle counter manufacturers were permitted, competition to sell drinking water particle counters to large and small municipalities throughout the United States would be reduced substantially or eliminated. Municipalities likely would face higher prices and receive lower levels of quality and service.

I. JURISDICTION AND VENUE

4. This action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and Section 4 of the Sherman Antitrust Act, 15 U.S.C. § 4, to restrain the defendant from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1.

5. Pacific Scientific and Met One sell drinking water particle counters in interstate commerce. This Court has jurisdiction over this matter and over the parties pursuant to 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337.

6. Pacific Scientific and Met One transact business in this District. Venue is proper in this District under 28 U.S.C. § 1391(c).

II. THE DEFENDANT AND PARTIES TO THE PROPOSED TRANSACTION

7. Pacific Scientific is a California corporation with its headquarters in Newport Beach, California. Pacific Scientific reported annual sales in 1994 of approximately \$234,700,000. HIAC/ROYCO, the Division of Pacific Scientific that manufactures and sells drinking water particle counters, reported 1994 sales of

\$13,011,000.

8. Met One is a California corporation with its headquarters in Grants Pass, Oregon. Met One reported net sales in 1994 of approximately \$11,800,000.

9. Louis J. Petralli, Jr. owns approximately 80 percent of Met One.

III. TRADE AND COMMERCE

A. The Relevant Product Market

10. Manufacture and sale of drinking water particle counters is a "line of commerce" under Section 7 of the Clayton Act and a relevant product market for purposes of analyzing this acquisition under the Clayton and Sherman Acts.

There are no reasonably interchangeable substitutes for drinking water particle counters to which enough municipalities and water companies would switch in response to a small but significant, nontransitory increase in price imposed by drinking water particle counter manufacturers that would make such a price increase unprofitable.

11. Drinking water particle counters such as those made by defendant generally include four components: a sensor, which directs a laser beam from a laser diode through the water being tested; a sampler, which provides a means to transport a sample of the water in which the particles are being counted undisturbed through the sensor; a counter, which sorts the signals from the sensor by voltage and assigns a particle size to the signals; and software, which translates data into a readable format.

12. Pacific Scientific and Met One distribute their drinking water particle

counters under the HIAC/ROYCO and Met One brand names, respectively. Each firm sells its drinking water particle counters through its own sales force, as well as through third party sales representatives. Each firm has entered agreements with third parties to manufacture drinking water particle counters to be sold under a third party's label.

13. Municipalities generally purchase drinking water particle counters through formal bid procedures. Although price is an important factor, municipalities also consider quality, reliability, service, and the reputation of the qualifying firms. Municipalities routinely request as part of a firm's bid package a list of references from past successful bids from each firm. Municipalities also routinely invite drinking water particle counter competitors to demonstrate the capabilities of their respective devices prior to the municipality's determination of the bid winner.

14. In addition to drinking water particle counters, municipal water treatment facilities may use devices known as turbiditymeters, which are not part of the relevant market. Turbidity is an optical measurement of solid contamination suspended as particles in a fluid. Turbiditymeters have significantly different attributes than drinking water particle counters. For example, turbiditymeters cannot detect small quantities of microorganisms such as *Cryptosporidium*, as particle counters can. And, unlike drinking water particle counters, turbiditymeters do not provide exact data for the size and number of particles in a given medium. Municipalities do not consider turbiditymeters to be

substitutes for drinking water particle counters.

B. Relevant Geographic Market

15. The United States is a "section of the country" under Section 7 of the Clayton Act and a relevant geographic market for purposes of analyzing this transaction under the Clayton and Sherman Acts. Defendant sells drinking water particle counters to municipalities throughout the United States.

IV. COMPETITION AND ENTRY

16. Using a measure of market concentration called the HHI, defined and explained in Appendix A, a combination of Pacific Scientific and Met One would increase substantially concentration in this already highly concentrated market. The approximate post-merger HHI for the relevant market based on 1994 dollar sales is 4842 with a change of 2108 from the premerger HHI. On this basis, the combined company would have a market share of 65%.

17. Pacific Scientific and Met One are head-to-head competitors in the manufacture and sale of drinking water particle counters. The drinking water particle counters manufactured and sold by Pacific Scientific and Met One are the best substitutes for each other. Competition between them has been instrumental in providing municipalities higher quality, better service, and lower prices. The acquisition of Met One by Pacific Scientific would eliminate that competition; it would decrease incentives to maintain high levels of quality and service and to keep prices low.

18. It is unlikely that timely and sufficient entry of a new drinking water

particle counter manufacturer in the market would prevent harm to competition caused by Pacific Scientific's acquisition of Met One.

V. VIOLATIONS ALLEGED

19. According to a letter of intent dated September 6, 1995, Pacific Scientific and Louis J. Petralli, Jr. intend a merger of Pacific Scientific and Met One, to be accomplished by the exchange of shares of Pacific Scientific common stock for all the outstanding shares of Met One.

20. This acquisition is likely substantially to lessen competition and unreasonably to restrain trade in the market for drinking water particle counters in the United States, in violation of Section 7 of the Clayton Act and Section 1 of the Sherman Antitrust Act.

21. The combination will have the following effects, among others:

- a. actual and potential competition between Pacific Scientific and Met One in the sale of drinking water particle counters will be eliminated;
- b. competition generally in the sale of drinking water particle counters is likely to be substantially lessened.

VI. REQUEST FOR RELIEF

The United States requests that:

- 1. The proposed merger of Pacific Scientific and Met One be judged a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1;
- 2. The defendant and all persons acting on its behalf be preliminarily

and permanently enjoined from carrying out the proposed merger of Pacific Scientific and Met One or any similar agreement, understanding, or plan;

3. The United States recover the costs of this action; and

4. The United States have such other relief as the Court may deem

proper.

Dated: January 30, 1996

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APPENDIX A

DEFINITION OF HERFINDAHL-HIRSCHMAN INDEX ("HHI")

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It 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 thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. 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 those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in moderately concentrated and concentrated markets presumptively raise antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.