

1 JAMES E. FIGENSHAW
2 GLENDA R. JERMANOVICH
3 HOWARD J. PARKER
4 Antitrust Division
5 Department of Justice
6 450 Golden Gate Avenue
7 Box 36046, Room 16216C
8 San Francisco, California 94102
9 Telephone: (415) 556-6300

10 Attorneys for the United States

11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,)
14)
15 Plaintiff,)

16 v.)

17 SPECTRA-PHYSICS, INC. and)
18 LASERPLANE CORPORATION,)

19 Defendants.)

20 Civ. No. C-78-1879 TEH

21 COMPETITIVE IMPACT STATEMENT

22 Pursuant to Section 2(b) of the Antitrust Procedures and
23 Penalties Act [15 U.S.C. § 16(b)], the United States hereby
24 submits this Competitive Impact Statement relating to the proposed
25 consent judgment submitted for entry in this civil antitrust
26 proceeding.

27 I. NATURE AND PURPOSE OF THE PROCEEDING

28 On August 18, 1978, the United States filed a civil complaint
29 under Section 15 of the Clayton Act [15 U.S.C. § 25], alleging
30 that the defendants had violated Section 7 of the Clayton Act [15
31 U.S.C. § 18]. The complaint charged that the December 8, 1976
32 acquisition of all the outstanding shares of Laserplane
Corporation by Spectra-Physics, Inc. threatened to substantially
lessen competition and create a monopoly in the development,
manufacture, and sale of construction laser products and systems

1 and machine control laser products and systems. During the course
2 of pre-trial discovery, the Government concluded that the
3 acquisition did not substantially lessen competition in
4 construction lasers and advised the defendants that it would seek
5 relief only with respect to machine control laser products and
6 systems.

7
8 II. DESCRIPTION OF PRACTICES AND EVENTS
9 INVOLVED IN THE ALLEGED VIOLATION

10 Prior to the acquisition, Laserplane Corporation was the
11 dominant firm in the development, manufacture, and sale of machine
12 control laser products and systems that guide and control heavy
13 earth-moving machines for land leveling and farm drainage
14 applications in the general construction and agricultural
15 industries. At that time, machine control laser products and
16 systems had not yet achieved widespread consumer acceptance and
17 total sales were small. Prior to its acquisition of Laserplane,
18 Spectra-Physics produced laser alignment products and systems
19 generally and had produced the components of a machine control
20 laser system which it attempted to sell principally for farm
21 drainage. The Government contends that the acquisition
22 substantially lessened actual and potential competition between
23 Spectra-Physics and Laserplane and increased concentration
24 generally in the development, manufacture and sale of machine
25 control lasers.

26 Since the filing of the complaint, machine control laser
27 products and systems have found greater consumer acceptance and
28 several new companies have entered the market. The defendants'
29 share of the machine control laser market has declined since the
30 filing of the complaint.
31
32

1 III. EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

2
3 The Government and the defendants have stipulated that the
4 proposed consent judgment, which is in a form negotiated by the
5 parties, may be entered by the Court at any time after compliance
6 with the Antitrust Procedures and Penalties Act. The stipulation
7 between the parties provides that there has been no admission by
8 any party with respect to any issue of fact or law. Under the
9 provisions of Section 2(e) of the Antitrust Procedures and
10 Penalties Act, entry of the proposed judgment by the Court is
11 conditioned upon a determination by the Court that the judgment is
12 in the public interest.

13 The proposed judgment requires the defendants to grant to any
14 person who makes a written application within a period of seven
15 years a nonexclusive royalty-free license to make, use, and sell
16 machine control laser products and systems under any United States
17 patent which the defendants had a right to license as of
18 January 1, 1980. All of the defendants' patents covering products
19 and systems presently being used for machine control laser
20 applications were acquired prior to this date. The proposed
21 judgment also requires the defendants to grant to any person
22 who makes a written application within seven years a nonexclusive
23 royalty-free license to use any written information, process,
24 formula or method for the manufacture of machine control laser
25 products and systems within defendants' possession as of
26 January 1, 1980.

27 Because of the competitive importance of technology in this
28 industry, patents and unpatented know-how were among the most
29 important assets involved in the challenged acquisition.
30 Compulsory royalty-free licensing of this technology should remedy
31 the increased concentration and the other anticompetitive effects
32 of the acquisition. Existing competitors in the market may be

1 able to improve their products and increase sales by obtaining
2 licenses. Licensing may also attract new entry, particularly from
3 manufacturers of heavy machinery which would be likely entrants
4 but for their lack of technological expertise in laser systems.
5 Licensing will also permit both new entrants and existing
6 competitors to expand sales without the threat or fear of any suit
7 for patent infringement.

8 The defendants are permitted by the proposed judgment to
9 charge a reasonable fee to cover the administrative costs of
10 issuing any license as well as to forbid the unauthorized use or
11 disclosure of the information provided.

12 13 IV. ALTERNATIVES TO THE PROPOSED CONSENT JUDGMENT

14
15 The proposed judgment is the product of lengthy negotiations
16 with the defendants during continuously changing market circum-
17 stances. The Government originally sought divestiture of
18 Laserplane's corporate assets by Spectra-Physics.

19 Although total divestiture has been, and will continue to be,
20 the principal relief sought by the Government in Section 7 cases,
21 the Government has concluded that compulsory, royalty-free
22 licensing of technology is adequate relief in the unique
23 circumstances of this case. Because of the nature of the product
24 market and the current stage of development of the product,
25 Spectra-Physics' manufacturing, sales, and distribution assets
26 have relatively less competitive importance than such assets would
27 have in other industries, whereas Spectra-Physics' technology has
28 relatively more importance. The market has experienced
29 substantial entry by new competitors since the Government filed
30 suit, and the proposed relief is expected to provide additional
31 encouragement to new entry. Finally, divestiture of physical
32 assets in a manner that would ensure competitive viability for

1 both Spectra-Physics and the divested entity would have been more
2 difficult here than in the typical Section 7 case, because many of
3 the assets, including manufacturing facilities, are non-divisible.
4 Therefore, the Government concluded that the proposed relief would
5 remedy the anticompetitive effects of the acquisition as
6 adequately as divestiture would.

7
8 **V. REMEDIES AVAILABLE TO POTENTIAL**
9 **PRIVATE PLAINTIFFS**

10 Any potential private plaintiffs who might have been damaged
11 by the alleged violation will retain the same right to sue for
12 monetary damages and any other legal and equitable remedies that
13 they would have had, were the proposed consent judgment not
14 entered. However, pursuant to Section 5(a) of the Clayton Act
15 [15 U.S.C. § 16(a)], as amended, this judgment may not be used as
16 prima facie evidence in private litigation.

17
18 **VI. PROCEDURES AVAILABLE FOR MODIFICATION**
19 **OF THE PROPOSED JUDGMENT**

20 As provided by the Antitrust Procedures and Penalties Act, any
21 person believing that the proposed judgment should be modified may
22 submit written comments to Anthony E. Desmond, Department of
23 Justice, Antitrust Division, 450 Golden Gate Avenue, San Francisco,
24 California 94102, within the 60-day period provided by the Act. The
25 comments and the Government's responses to them will be filed with
26 the Court and published in the Federal Register. All comments will
27 be given due consideration by the Department of Justice, which
28 remains free to withdraw its consent to the proposed judgment at any
29 time prior to its entry if it should determine that some modifica-
30 tion of the judgment is necessary in the public interest. The
31 proposed judgment itself provides that the Court will retain
32 jurisdiction over this action, and that the parties may apply to the

1 Court for such orders as may be necessary or appropriate for the
2 modification or enforcement of the judgment.

3
4 **VII. DETERMINATIVE DOCUMENTS**

5
6 No materials and documents of the type described in Section 2(b)
7 of the Antitrust Procedures and Penalties Act [15 U.S.C. § 16(b)]
8 were considered in formulating this proposed judgment.

9
10 Dated:

11
12
13 _____
14 **JAMES E. FIGENSHAW**
15 **Attorney, U. S. Department of Justice**
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32