

IN THE MATTER OF
HARBOUR GROUP INVESTMENTS, L.P.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9244. Complaint, Nov. 28, 1990—Decision, Aug. 19, 1991

This consent order requires, among other things, a Missouri producer of telescopes, for a period of ten years, to seek prior Commission approval for certain mergers or acquisitions.

Appearances

For the Commission: *Claudia R. Higgins* and *Steven A. Newborn*.

For the respondent: *Sidney Dickstein, Dickstein, Shapiro & Morin*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that the respondents, Harbour Group Investments L.P., a limited partnership subject to the jurisdiction of the Commission, and Diethelm Holding (U.S.A.) Ltd., a corporation subject to the jurisdiction of the Commission, have offered to enter into a joint venture between their respective subsidiaries Meade Instruments and Celestron International which, if completed, would violate the provisions 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; that said joint venture agreement constitutes a violation of Section 5 of the FTC Act, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITIONS

1. For the purposes of this complaint, the following definitions will apply:

a. "*Harbour Group*" means Harbour Group L.P., a limited partnership organized, existing, and doing business under and by virtue of the laws of Missouri with its principal offices at 7701 Forsyth Blvd, Suite 600, Clayton, Missouri, as well as its officers, employees, agents, parents, divisions, subsidiaries, successors, assigns, and the officers, employees, or agents of Harbour Group's divisions, subsidiaries, successors and assigns.

b. "*Meade*" means Meade Instruments, a subsidiary of Harbour Group.

c. "*Diethelm*" means Diethelm Holding (U.S.A.) Ltd., a corporation organized, existing, and doing business under and by virtue of the laws of Nevada with its principal offices at 17 Gina Drive, Centerport, New York, as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of Diethelm's divisions, subsidiaries, successors and assigns.

d. "*Celestron*" means Celestron International, a subsidiary of Diethelm.

e. "*SCT*" means mid-sized Schmidt-Cassegrain telescopes used for astronomical viewing.

II. THE PARTIES

2. Harbour Group is a limited partnership organized and existing under the laws of Missouri, with its principal place of business at 7701 Forsyth Blvd, Suite 600, Clayton, Missouri. Harbour Group's subsidiary, Meade, a corporation organized and existing under the laws of California, has its principal place of business at 1675 Toronto Way, Costa Mesa, California.

3. In fiscal year 1990, Harbour Group estimates Meade sales of SCTs were approximately \$ 1.6 million in the United States.

4. Harbour Group 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 affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

5. Diethelm is a corporation organized and existing under the laws of Nevada, with its principal place of business at 17 Gina Drive,

Centerport, New York. Diethelm's subsidiary, Celestron, a corporation organized and existing under the laws of California, has its principal place of business at 2835 Columbia Street, Torrance, California.

6. In fiscal year 1990, Diethelm estimates Celestron sales of SCTs were approximately \$ 2.5 million in the United States.

7. Diethelm 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 affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE PROPOSED JOINT VENTURE

8. On or about May 25, 1990, Harbour Group and Diethelm agreed to create a joint venture consisting of their respective telescope subsidiaries, Meade and Celestron. The transaction is valued at approximately \$ 25.5 million. Meade is engaged in the manufacture and sale of SCTs. Celestron is engaged in the manufacture and sale of SCTs. The entity created by joint venture, Celestron Meade International, would be a virtual monopolist in the manufacture and sale of SCTs.

IV. TRADE AND COMMERCE

9. The relevant line of commerce in which to analyze the proposed joint venture is SCTs.

10. The relevant geographic market is the United States.

V. MARKET STRUCTURE

11. The United States market for the manufacture and sale of SCTs is highly concentrated. Meade and Celestron are the two largest firms manufacturing and selling SCTs in the United States.

VI. ENTRY CONDITIONS

12. Entry into the relevant market is difficult.

VII. COMPETITION

13. Meade and Celestron are direct competitors in the manufacture and sale of SCTs. This joint venture would create a virtual monopoly in the relevant market.

VIII. EFFECTS

14. The effect of the joint venture, if consummated, may be

substantially to lessen competition or tend to create a monopoly in the relevant line of commerce in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

IX. VIOLATIONS CHARGED

15. The proposed joint venture between Meade and Celestron violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and would, if consummated, violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

Commissioner Starek not participating.

DECISION AND ORDER

The Federal Trade Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

Respondent Harbour Group, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Harbour Group is a limited partnership organized, existing and doing business under and by virtue of the laws of the

State of Missouri, with its office and principal place of business located at 7701 Forsyth Blvd., Suite 600, in the City of Clayton, in the State of Missouri.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

For purposes of this order, the following definitions shall apply:

“*Harbour Group*” means Harbour Group Investments, L.P., as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, operating companies, successors, and assigns, as well as the officers, employees and agents of its parents, divisions, subsidiaries and operating companies.

“*Meade*” means Meade Instruments, a subsidiary of Harbour Group, as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, successors, and assigns, as well as the officers, employees and agents of its parents, divisions and subsidiaries.

“*SCTs*” means mid-sized Schmidt-Cassegrain telescopes with apertures of eight (8) to eleven (11) inches used for astronomical viewing.

II.

It is ordered, That for a period commencing on the date this order becomes final and continuing for ten (10) years, Harbour Group shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, equity interest, or assets, other than purchases of manufactured product in the ordinary course of business, of any company engaged in the manufacture or sale of SCTs in the United States.

III.

It is further ordered, That Harbour Group shall require, as a

condition precedent to the closing of any sale or other disposition of all or a substantial part of the stock of Meade, or a substantial part of the assets of Meade to any party that is engaged in or, to the best of Harbour Group's knowledge upon reasonable inquiry, is planning to, considering or contemplating engaging in the manufacture of SCTs in the United States or elsewhere for sale in the United States, that the acquiring party file with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of this order.

IV.

It is further ordered, That Harbour Group shall within sixty (60) days after this order becomes final and one year from the date this order becomes final and annually for nine (9) years thereafter, file with the Commission a verified written report setting forth in detail the manner and form in which it has complied and intends to comply with this order.

V.

It is further ordered, That, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Harbour Group made to its principal office, Harbour Group shall permit any duly authorized representatives of the Federal Trade Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Harbour Group relating to any matters contained in this order; and

(B) Upon five days notice to Harbour Group and without restraint or interference from Harbour Group, to interview officers or employees of Harbour Group, who may have counsel present, regarding such matters.

VI.

It is further ordered, That Harbour Group shall notify the

Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor partnership or corporation, the creation, dissolution or sale of subsidiaries (except subsidiaries not engaged in any manner, directly or indirectly, in the manufacture or sale of SCTs), including, but not limited to, sale of the stock or assets of Meade, or any other change that may affect compliance obligations arising out of this order.

IN THE MATTER OF
DIETHELM HOLDING (U.S.A.) LTD.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9244. Complaint, Nov. 28, 1990—Decision, Aug. 19, 1991*

This consent order requires, among other things, a New York based producer of telescopes, for a period of ten years, to seek prior Commission approval for certain mergers or acquisitions.

Appearances

For the Commission: *Claudia R. Higgins* and *Steven A. Newborn*.

For the respondent: *Bernhardt K. Wruble, Verner, Liipfert, Bernhard, McPherson & Hand*, Washington, D.C.

DECISION AND ORDER

The Federal Trade Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

Respondent Diethelm, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having there-

*Complaint previously published at 114 FTC 503.