

**REFERENCE RELATING TO THE COMPLETED ACQUISITION
BY THERMO ELECTRON MANUFACTURING LIMITED OF
GV INSTRUMENTS LTD**

**Notice of provisional findings made under Rule 10.3
of the Competition Commission Rules of Procedure**

1. On 15 December 2006, the Office of Fair Trading, in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act) and its power under section 36(6) of the Act, referred to the Competition Commission (CC) the completed acquisition by Thermo Electron Manufacturing Limited, part of Thermo Electron Corporation (Thermo), of GV Instruments Ltd for investigation and report within a period ending on 31 May 2007.

Provisional findings

2. The CC inquiry group (the Group) appointed to consider this reference has made the following provisional findings on the statutory questions it has to decide pursuant to section 35(1) of the Act:
 - (a) a relevant merger situation has been created; and
 - (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) in (i) the supply of Gas Isotope Ratio mass spectrometers; and (ii) the supply of Thermal Ionization mass spectrometers in the UK.
3. The Group's reasons are set out in full in the provisional findings report and are summarized in the executive summary of the provisional findings report (see note 1 below).

The next steps

4. Thermo and other interested parties are now invited to provide the Group with their reasons in writing as to why these provisional findings should not become final (or, as the case may be, should be varied).
5. These reasons should be received by the Group no later than 17 April.
6. The Group will have regard to any such reasons in making their final decisions on the statutory questions and actions.
7. The Group is also sending to Thermo, and publishing, a notice of the possible actions which it considers might be taken by the CC to remedy the SLC provisionally identified.



Diane Coyle
Group Chairman
22 March 2007

Notes:

1. A copy of this notice and the executive summary of the provisional findings report will be placed on the CC website on 22 March 2007. The CC proposes to publish the provisional findings report on its website by 26 March. The published version of the provisional findings report will not contain any information which the Group considers should be excluded from the report, having regard to the three considerations set out in section 244 of the Act.

2. Comments should be made in writing to:

Inquiry Secretary
Thermo/GVI merger inquiry
Victoria House
Southampton Row
London
WC1B 4AD

or by email to: thermoGVI@cc.gsi.gov.uk.

Summary

1. On 15 December 2006, the Office of Fair Trading (OFT) referred the completed acquisition of GV Instruments Limited (GVI) by Thermo Electron Manufacturing Limited, part of Thermo Electron Corporation (Thermo),¹ to the Competition Commission (CC) for investigation and report. The reference was made under section 22 of the Enterprise Act 2002 (the Act). We are required to publish our final report by 31 May 2007.
2. GVI and Thermo are the two largest suppliers of Isotope Ratio Mass Spectrometry (IRMS) instruments.
3. Mass spectrometry (MS) is an analytical technique used to identify the composition of a sample by determination of the atomic/molecular mass or masses within the sample. There are a number of major groups of MS instruments; IRMS forms part of the magnetic group of MS and is a small and mature sector. Global sales of original equipment and aftermarket support are estimated to be worth approximately \$50 million a year. Customers include university science departments, research institutes and the nuclear industry.
4. There are four main categories of IRMS instruments:
 - Gas (also known as stable or light) IRMS;
 - Thermal Ionization MS (TIMS);
 - Multi-Collector Inductively Coupled Plasma MS (MC-ICP-MS); and
 - Noble Gas MS.
5. Prior to the acquisition, GVI and Thermo were both suppliers of Gas IRMS, TIMS and MC-ICP-MS instruments. GVI was also a supplier of Noble Gas MS instruments.

¹ On 9 November 2006, Thermo merged with Fisher Scientific International Inc to form Thermo Fisher Scientific Inc.

6. We considered the definition of the relevant markets for IRMS. We concluded that Gas IRMS, TIMS, MC-ICP-MS and Noble Gas MS constitute four separate relevant markets. Because Thermo did not have a Noble Gas IRMS business before its acquisition of GVI, and we did not expect it to provide a competitive constraint on this market without the acquisition, we did not consider the effect of the merger on this market any further. We consider that there is a single systems market (mass spectrometer plus peripherals) for the Gas IRMS, TIMS and MC-ICP-MS markets. For the purpose of our analysis, we treated the relevant markets as global.
7. We examined competition in the relevant markets. We found that most sales took place by a tender process and we found that Thermo and GVI competed in the Gas IRMS, TIMS and MC-ICP-MS markets.
8. We also found that there were significant barriers to entry, which included both the cost and time required to develop a product and the need for both the company and its products to have a good market reputation. We found that these same features could act as barriers to expansion, such that a small 'fringe' provider would find it hard to expand rapidly.
9. We considered what would have been likely to occur if Thermo had not acquired GVI. This alternative scenario is referred to as 'the counterfactual'.
10. Thermo submitted that, were it not for its acquisition of GVI, GVI would have imminently failed and gone into liquidation. Thermo considered that some of GVI's assets might have been bought by small UK IRMS competitors, but argued that the increase in the competitive constraint on Thermo which would have arisen from these small acquisitions would not have been material. Thermo submitted that, compared

with this counterfactual, its acquisition of GVI had not led to a substantial lessening of competition.

11. We obtained and considered evidence from several sources relating to GVI's financial condition. We concluded that it was likely that GVI would have failed and gone into administration.
12. We obtained evidence from a number of businesses that might have been interested in purchasing some or all of GVI's assets. We found that GVI's Gas IRMS and TIMS assets would probably have been purchased out of administration but we did not think that this was likely for GVI's MC-ICP-MS assets.
13. We recognized that a purchaser of GVI's Gas IRMS and TIMS assets might not have been able to impose as strong a competitive constraint on Thermo with these assets as had been imposed by GVI prior to the merger. However, we considered a range of outcomes and judged that any of the possible purchasers of these assets within our counterfactual would have been able to retain at least 50 per cent of GVI's pre-merger market share.
14. In the Gas IRMS market we considered that Thermo's market share would be likely to be very high with the merger, but, although high, would have been significantly less high under the counterfactual. We considered that the difference between these two scenarios represents a substantial lessening of competition, which may be expected to result from the merger.
15. In the TIMS market we considered that Thermo would have a monopoly with the merger, but, under the counterfactual, there would have been a competitor with a significant market share. We considered that the difference between these two

scenarios represents a substantial lessening of competition, which may be expected to result from the merger.

16. In the MC-ICP-MS market, we do not believe the merger, compared with the counterfactual, would lead to a substantial lessening of competition.
17. We provisionally conclude that the acquisition of GVI by Thermo constitutes a relevant merger situation, which may be expected to result in a substantial lessening of competition in the Gas IRMS market and the TIMS market, in the UK.