

Thermo Electron/GV Instruments merger inquiry

Summary of third party responses to the provisional findings and Notice of possible remedies

1. On 22 March 2007, the CC published a summary of provisional findings and a Notice of possible remedies. The full provisional findings were published on 26 March. Responses were invited by 17 April.
2. We received one response from a third party to the provisional findings. This party stated:

I wish to emphasize that the proposed acquisition would in fact assure competition in noble gas mass spectrometers, as GVI's imminent demise would have given Nu Instruments a monopoly in this area ... Given that it is abundantly clear that without the acquisition, GVI would fail and the default would be a monopoly in the TIMS market anyway, I urge the approval of the acquisition.
3. We received 13 third party responses to the Notice of possible remedies. These came from competitors and other parties. We held hearings by telephone with some parties. Details of the main points made in the responses and hearings are given verbatim below. Confidential material has been omitted. Further material has been included in the CC's remedies working paper.

Possible divestiture of the whole of GVI

4. The following comments were made:
 - (a) '[on divestiture of the whole of GVI] you would definitely get a number of purchasers come forward. The difficulty will be identifying who has actually got the full sort of structure and the investment capability to make a full purchase work. What we do know is when the Waters group were selling off the inorganic part of it that then became GV Instruments in the first instance, that there were actually quite a number of interested parties, and there is no reason to think that they would not be interested another time, plus also the potential for others as well. I think it is very hard to answer until it is actually in that position so that people can see exactly what is left at the moment.'
 - (b) '[The possible divestiture of GVI] would only address the SLC if the PRODUCTS are still seen by the market place as a viable alternative to those offered by Thermo.... If you found a buyer for GVI and it was prepared to take on all the liabilities and was commercially viable, and could be seen to be commercially viable, that is fair. I do not think that that is likely, but I would regard that as fair.'
 - (c) 'Any potential purchaser would necessarily require a large amount of cash to hand and more importantly not be worried about losing this.'
 - (d) 'The divestiture of the whole of GVI is unlikely to completely address the SLC.'
 - (e) 'Divestiture of the whole of GVI would effectively address the SLC.'
 - (f) '... divesting of all GVI would address the SLC issue. However, I am not in a position to say whether a suitable purchaser could be found; this will very much be determined by the price of the business.'

Possible divestiture of parts of GVI

5. The following comments were made:
- (a) '[Partial divestiture] would be a more viable way of doing it, basically because although the sort of theories and the physics behind how the instruments operate are very similar, once you get beyond that level there is in fact very little similar to any of the range of instruments.... So I think the reality of it is that you would see very little problems with actually carving things out ... it is probably more attractive to take the gamble of a specific product line than it is to try and take the whole bunch on....'
 - (b) '...GVI is now a dead parrot.... Partial divestiture ... would have a similar outcome [ie would not bring it back to life].'
 - (c) '[On partial divestiture] only someone who strongly desired these particular products would be interested.'
 - (d) '[On partial divestiture] there is still no guarantee that the SLC will be effectively addressed in the long term.'
 - (e) 'We do not believe that [partial divestiture would effectively address the SLC] ... the minimum divestiture that we believe could operate viably is Gas IRMS and Noble Gas equipment.'
 - (f) '[Partial divestiture] would address the immediate SLC but may not result in the most effective solution long term.'
 - (g) '[Partial divestiture] would address the SLC.'
 - (h) '[To divest] TIMS [and] Stable [as an] on going concern [would] assure focus on the SLC.'

Suggestion of a licensing remedy

6. One party suggested that requiring Thermo to license certain of GVI's intellectual property rights and know how to third parties would represent an effective remedies package in addressing the SLC. We received the following comments on this suggestion:
- (a) 'The problem would be quite how the licensing would work. It would really have to be an international licence.... Secondly ... [T]he danger ... is that you freeze the product range entirely in time or you end up with some kind of agreement that is so cumbersome that it can't actually work.'
 - (b) 'I am astonished at the suggestion that licensing some of the GVI intellectual property and know-how is made seriously.... The control hardware and software to interface with peripherals supplied by other manufacturers should be easily developed by anyone who has any technical ability or knowledge in the field ... the suggestion that this would enable more effective competition is ... rubbish.'
 - (c) 'The granting of licenses is an extremely interesting idea. In our opinion this option would provide the most effective solution to the SLC and has the best chance of long term success. In addition it would presumably prevent a similar situation arising in the future ... [t]he licences would have to be readily available

and not priced at an inhibitive level. Ideally, the relevant technology might be placed in the public domain.'

- (d) 'Giving a licence to use the GVI technology for a product line to one company may create a viable competitor in that product segment.'
- (e) 'Our preferred remedy would be that a deal is struck with Waters concerning the intellectual property (IP) such that GVI can be sold as a going concern rather than tearing apart the company to enhance another company's product portfolio.... If a deal cannot be brokered with Waters regarding the IP then one potential avenue worth pursuing would be to license Thermo software and IP to GVI so they do not have to pay the licence fee.'
- (f) 'I believe that the viability of such a proposal would be questionable given the Waters licence agreement.'

Relevant customer benefits

- 7. The CC has to consider the nature and scale of any relevant customer benefits which might arise as a result of the acquisition and which might be affected by any remedy. We received a few examples of such benefits. The points made were as follows:
 - (a) 'Customer benefits could be affected in the field of service/support and product development.... If a company without a substantial service organisation ... was to inherit responsibility for the service and support of GVI mass spectrometers this could result in a lessening of customer benefits in many areas....'
 - (b) 'If a remedy is proposed that means people are lost from GVI (as would happen if the companies base was relocated to another site) then product development may take many years to catch up again.'
 - (c) 'The principal benefit to customers from the acquisition is that Thermo have a large and fully international service and spare parts network well equipped to provide good service. I am not aware of any likely buyer who could rival this.'

Other possible remedies

- 8. One party suggested: 'the present arrangement of having GVI trade as a 'stand alone' entity financed by Thermo, can be allowed to continue indefinitely.... There should be a 'Chinese wall' between the Bremen and UK development teams.'
- 9. One party suggested: 'Would agreed price controls on Gas IRMS and TIMS for a period of eg 2 years protect the market from opportunistic price rises until ... competition develops?'

Competition Commission
30 April 2007.