

Terms of reference and conduct of the Inquiry

Terms of reference

1. On 15 December 2006 the OFT sent to the CC the following reference:
 1. Whereas in exercise of its duty under section 22(1) of the Enterprise Act 2002 (“the Act”) to make a reference to the Competition Commission (“the CC”) in relation to a completed merger the Office of Fair Trading (“the OFT”) believes that it is or may be the case that—
 - (a) a relevant merger situation has been created in that:
 - (i) enterprises carried on by or under the control of Thermo Electron Manufacturing Limited (“Thermo”) have ceased to be distinct from enterprises carried on by GV instruments Ltd (“GVI”); and
 - (ii) as a result, the condition specified in section 23(3) of the Act prevails or prevails to a greater extent, with respect to the supply of Gas Isotope Ratio mass spectrometers (GAS IRMS) Thermal Ionization mass spectrometers (TIMS) and Multicollector-Inductively Coupled Plasma-mass spectrometers (MC-ICP-MS); and
 - (b) the creation of that situation has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom for goods or services, including the supply of Gas IRMS; the supply of TIMS; and the supply of MC-ICP-MS.
 2. Now therefore the OFT, in exercise of its duty under section 22 of the Act, hereby refers to the CC, for investigation and report within a period ending on 31 May 2007, the following questions in accordance with section 35 of the Act—
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
 3. In relation to the question whether a relevant merger situation has been created, the CC shall exclude from consideration one of the subsections (1) and (2) of section 23 of the Act if they find that the other is satisfied.

(signed) **Vincent Smith**
Senior Director, Competition
Office of Fair Trading
15 December 2006

Conduct of inquiry

2. Notices inviting interested parties to submit evidence to the CC were placed on the following websites: ISOGEOCHEM; bmss; asms. We also posted an invitation to express views to us on the CC website,¹ together with an administrative timetable for the inquiry.
3. We sought evidence from customers, competitors, regulators and possible bidders for GVI, by inviting them to complete questionnaires. Summaries of evidence submitted in response to these questionnaires have been published on the CC website. We held hearings with some parties and telephone conversations with others. Following the publication of the provisional findings and the Notice of possible remedies, we sought views from third parties and held telephone conversations with a number of them.
4. Members of the Group, accompanied by staff, visited GVI's factory in Wythenshawe.
5. We received written evidence and held two hearings with Thermo. Summaries of Thermo's submissions have been placed on the CC website.
6. In the course of the inquiry we sent to Thermo: a statement of issues; a number of working papers; the provisional findings; the Notice of possible remedies; and a working paper on remedies.
7. On 21 December 2006, we adopted the interim undertakings agreed by the OFT with Thermo for the purpose of preventing pre-emptive action. The CC had ongoing concerns regarding the integration of the merged businesses which led to the interim undertakings being replaced by revised undertakings on 26 February 2007. On 10 May 2007 the CC sent Thermo directions requiring the appointment of a Monitoring Trustee, pursuant to paragraph 7 of the undertakings, for the purpose of securing compliance with the undertakings pending final determination of the reference.
8. A copy of this final report has been placed on the CC website.

¹www.competition-commission.org.uk.