

21/04

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ANTI-COMPETITIVE EFFECTS OF DRÄGER/AIR-SHIELDS MERGER CAN BE REMEDIED BY UNDERTAKINGS

In its report published today, the Competition Commission (CC) has concluded that the proposed acquisition by Dräger Medical AG & Co KGaA of the Air-Shields neonatal warming therapy products business from Hillenbrand Industries Inc. may be expected to give rise to a substantial lessening of competition (SLC) in the markets for closed care incubators, open care warming beds and transport incubators, but not in the market for phototherapy products. To address the effects of the SLC, the CC has not sought to block the merger, but will seek undertakings on a package of behavioural remedies. It has also made recommendations to UK health departments and their procurement agencies that they take action to encourage market entry and strengthen the buyer power of NHS trusts in order to act as a further competitive restraint on the merged company in the longer term.

Inquiry Chairman Sir Derek Morris said:

“Dräger and Air-Shields are currently two of the main competitors in these markets. The loss of one of them, and the substantial market shares which the merged company would hold, would enable it to raise prices and reduce choice of products for hospitals. We believe that in the longer term these adverse effects can best be remedied by new entry into the market and the increased exercise of buyer power by hospital trusts, and our recommendations are designed to achieve these outcomes. In order to remedy the adverse effects in the short term the CC will require a commitment from Dräger to continue to supply, and accept a price control on, a full range of products and services in the UK for the next three years.

“We have received a positive response to our recommendations from the UK health departments. Action by them to develop procurement planning and practice and encourage new entrants into these markets will, in the longer term, remedy the adverse effects of the substantial lessening of competition on price and choice.”

Following a thorough inquiry, the CC found that the proposed acquisition by Dräger of the Air-Shields neonatal warming therapy products business may be expected to give rise to a substantial lessening of competition in the markets for closed care incubators, open care warming beds and transport incubators, primarily because the substantial market share that

the merged entity would hold would enable it to raise prices selectively to a significant number of hospitals. It also found that the loss of an independent competitor and rationalization of product lines is likely to give rise to a reduction in choice of products for hospitals.

It concluded that the most comprehensive and appropriate remedies to the SLC in these markets in the short and the long term could be achieved by a package of actions comprising:

- recommendations to UK health departments and their procurement agencies designed to encourage market entry from overseas and the increased exercise of buyer power by trusts;
- time-limited commitments by the merged entity to continue to supply a full range of products, accessories, spares and after-sales service in the relevant UK markets; and
- a time-limited retail price control on the merged entity's products, accessories, spares and after-sales service in the relevant UK markets.

The CC's reasoning can be found in its report which is published on its web site—www.competition-commission.org.uk.

Notes for editors

1. On 18 December 2003, the Office of Fair Trading (OFT) referred the proposed acquisition by Dräger Medical AG & Co KGaA of certain assets representing the Air-Shields business of Hill-Rom Inc., a subsidiary of Hillenbrand Industries, Inc., to the CC for investigation and report.
2. The Enterprise Act 2002 (the Act) empowers the OFT to refer to the CC completed or proposed mergers, either where the merger creates or enhances a 25 per cent share of supply in the UK (or a substantial part thereof) or where the UK turnover associated with the enterprise being acquired is over £70 million.
3. The Dräger/Air-Shields inquiry group consisted of four members—Sir Derek Morris (Chairman of the CC), Laurence Elks, Graham Hadley and Professor Stephen Wilks—supported by the CC's staff.
4. The CC determined that there are separate markets for four different types of neonatal warming therapy products:
 - closed care incubators—incubators which provide a controlled environment for the baby within which temperature, humidity and oxygen levels in the air can be closely controlled;
 - open care warming beds—open cots warmed by an overhead radiant warmer or by a warmed mattress;
 - transport incubators—self-contained incubators attached to a trolley which are used for moving babies between departments in a hospital or between hospitals; and
 - phototherapy products—lamps which deliver light in a particular part of the spectrum which is necessary for the treatment of jaundiced babies.

5. The CC also concluded that the relevant geographic market for analysis of the supply of such products was the UK.
6. The CC had up to 24 weeks in which to investigate the merger and to publish its report. This inquiry was completed in 22 weeks.
7. Enquiries should be directed to Francis Royle, Chief Press Officer, on 020 7271 0242, or Rory Taylor on 020 7271 0398/rory.taylor@competition-commission.gsi.gov.uk.