OFFICE OF FAIR TRADING

Anticipated acquisition by Smiths Group plc of Medvest Holding Corporation Inc and its operating subsidiary Medex Inc

The OFT's decision on reference under section 33 (1) given on 26 January 2005

Please note that square brackets indicate information excised, or exact figures replaced by a range, at the parties' request.

PARTIES

1. **Smiths Group plc (Smiths)** is a specialist engineering group, operating internationally in detection, medical, aerospace and speciality engineering. Through its division Smiths Medical, it supplies medical devices used in surgery, critical, intensive and post-operative care, and in a series of home infusion therapies. For the financial year ended 31 July 2004, Smiths' UK turnover was around £346 million.

2. **Medvest Holding Corporation Inc (Medvest)** is the direct parent company of Medex Inc (Medex). The principal activities of Medex are the manufacture and distribution of a broad range of critical care medical devices used in acute and alternate care settings for a variety of both therapeutic and diagnostic procedures. For the financial year ended 31 December 2003, its UK turnover was £ [ ].

TRANSACTION

3. Smiths, via Smiths Medical Holdco Ltd, will merge a newly formed wholly owned subsidiary, Forest Acquisition Corp, into Medvest, which will be the surviving corporation and a wholly owned subsidiary of Smiths.

4. The proposed transaction was announced on 6 December 2004. The parties have notified the OFT by way of a Merger Notice, which expires on 26 January 2005.

JURISDICTION

5. As a result of this transaction Smiths and Medvest will cease to be distinct. The share of supply test in section 23(2)(b) of the Enterprise Act 2002 (the Act) is met

in respect of the supply in the UK of invasive blood pressure monitoring (IBPM) kits (the parties' estimate their combined share of supply in the UK will amount to [25-35] per cent). The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

RELEVANT MARKET

6. The parties overlap in the provision of various medical devices, in particular, IBPM kits and catheterisation laboratory procedure packs (cath lab packs). As each of the parties have only a negligible share of supply in the provision of individual components of both IBPM kits and cath lab packs, supply of these individual components is not considered further in this analysis.

7. The parties also overlap in the provision of humidifiers, syringe pumps, masks and central venous catheters. As the parties' combined UK shares of supply for each of these various medical devices are relatively low ([15-25] per cent for syringe pumps, [10-20] per cent for humidifiers and less than 3 per cent for anaesthesia masks and central venous catheters), the increments in each case are negligible (less than 1 per cent in all cases), and no third party raised concerns, these segments are not examined further.

Product market

IBPM kits

8. IBPM is a technique of invasive and continuous monitoring of blood pressure. It involves the use of *transducers*, which are medical devices that convert the patient's physical blood pressure into electrical signals to be displayed against time through a graph on an electronic monitor. At one end of the device, a *catheter* is inserted into the patient's artery, and which is attached to the transducer via a *monitoring line*. The other end of the device is connected to the monitor through *interface cables*. The transducer is also linked up to an *infusion set*, which is used to introduce saline into monitoring lines in order to maintain a constant pressure throughout the device. Each transducer contains a *stopcock*, a valve that regulates the flow of fluid through the monitoring lines. Transducers can be disposable or reusable.

9. The various individual pieces of medical equipment for IBPM are supplied as kits, since this saves customers the time and costs involved in sourcing them separately and assembling them on their own.

10. On the demand side, the main customers, hospitals, do not view non-invasive blood pressure monitoring equipment as substitutes for IBPM kits. Furthermore, most customers do not consider buying individual pieces of equipment for IBPM separately due to risks of incorrect assembling and of infection. In this respect, the parties confirm that kits are used in 90 per cent of IBPM situations.

11. The parties are active in the provision of disposable and reusable transducers. Their pricing strategy shows that the introduction of disposable transducers has been a competitive constraint on reusable transducers. Manufacturers have also said that sales of reusable transducers have been falling over recent years. However, the OFT does not consider that such evidence is sufficient in itself to suggest that competition issues should be assessed separately in relation to disposable and reusable transducers.

12. On the supply side, it appears plausible that suppliers of an individual component of an IBPM kit could buy other products from other manufacturers and sell the whole kit, thereby expanding the frame of reference to include all the suppliers of individual components of an IBPM kit. No firm conclusion is necessary on this point because even by focusing narrowly on suppliers of kits alone (the approach adopted below) no competition concerns arise.

Cath lab packs

13. Catheterisation (also known as 'interventional imaging') is a procedure in which a catheter is guided into the heart in order to diagnose or treat heart problems. Apart from the catheter, other devices used in the procedure include wires, scissors and scalpels. All these various devices used for this particular procedure are sold to hospitals primarily in a pre-packaged form known as a cath lab packs.

14. Smiths and Medex manufacture certain components of cath lab packs. However, in the main, they fulfil a packaging function. The position would appear to be the same for competitors of the parties in the provision of cath lab packs.

15. On the demand side, buying cath lab packs saves hospitals time and allows stocks from one source rather than repeated requisition from other different suppliers. Individual components of a pack are only stocked if additionally required (e.g. an extra syringe).

16. On the supply side, as with IBPM kits, it could be argued that the frame of reference is wider to include the suppliers of any individual component of a pack. Again, as with IBPM kits, no firm conclusion is necessary on this point because even by focusing narrowly on suppliers of packs alone (the approach adopted below) no competition concerns arise.

Geographic market

17. The parties argue that the relevant geographic scope for the supply of both IBPM kits and cath lab packs is at least EEA-wide. They point to the existence of strong global competitors, similar end-user prices across the EEA, low transport costs, the absence of regulatory or legal barriers within the EEA, widespread use of tendering procedures in procurement and very little need for the provision of aftercare or product servicing.

18. Most third parties concur with this view in relation to IBPM kits. In particular, many UK customers tender on an EEA-wide basis and would consider sourcing from manufacturers that do not currently operate in the UK. In respect of cath lab packs, there is some confirmation of the parties' view from third parties and there is in any event no overlap between the parties on a UK-wide basis.

19. For the purposes of this decision, it is unnecessary for the OFT to conclude on geographic frame of reference because competition concerns do not arise on either a UK or EEA basis in respect of either product. Share data on both bases are considered below.

HORIZONTAL ISSUES

IBPM kits

20. In the EEA, the parties will become the second largest supplier of IBPM kits by value (they estimate their combined share of supply at [20-30] per cent with an increment of [10-20] per cent). The merged entity will face competition in the EEA from Edwards Lifesciences ([25-35 per cent]), Hospira ([5-15] per cent), B Braun ([5-15] per cent) and other smaller players. In the UK, the parties will also become the second largest supplier of IBPM kits by value (their combined share of supply would amount to [25-35] per cent, with an increment of [0-10] per cent). The remaining main competitors in the UK will include Edwards Lifesciences ([35-45] per cent), B Braun ([5-15] per cent) and Abbott Laboratories ([0-10] per cent).[1]

Cath lab packs

21. In the UK, the parties do not overlap in the supply of cath lab packs as Smiths is not active in this segment in the UK. In the EEA, the merged entity will be the

[1] On 30 April 2004, Abbott Laboratories Ltd's relevant product portfolio was spun off to US company Hospira, which will be incorporated in the UK on 1 July 2005.

leading supplier but its share of supply will still be relatively low ([20-30] per cent, with an increment of [10-20] per cent) and numerous competitors remain, including B Braun ([5-15] per cent), Cordis/De Royal (J&J) ([5-15] per cent), Medica BV ([5-15] per cent), Cardinal ([0-10] per cent), Angiokard ([0-10] per cent) and Kimal ([0-10] per cent).

Barriers to entry and expansion

22. As both the above factors and the weight of third party comment is not cause for competition concerns, an assessment of barriers to entry is not critical to the outcome in this case. The parties claim that there are no significant barriers to entry in the provision of IBPM kits on the basis that (i) tenders across the EEA provide an opportunity for non-active suppliers in the UK to win contracts and enter the UK market, which would be even easier for well-known brands; and (ii) new entrants could easily obtain access to the necessary transducer technology which is not protected by IP rights. This was generally supported by third party responses. The parties also claim that there are no barriers to expansion. Some companies already produce kits for the original equipment manufacturer market and there is evidence that providers of sterilised kitting of other similar products could start supplying IBPM kits.

23. In the provision of cath lab packs, there is some evidence that providers of sterilised kitting or manufacturers of certain components of cath lab packs could move into the supply of cath lab packs.

Buyer power

24. The parties argue that they face powerful buyers in IBPM and cath lab packs who seek to obtain competitive offers, and who do not face significant switching costs. They also claim that hospitals are becoming increasingly sophisticated in their purchasing behaviour (e.g., by using consultants and other group organisations). Third parties on the whole supported this view. One manufacturer, however, thought that buyers were in a weak position.

VERTICAL ISSUES

25. No vertical competition issues arise as a result of this transaction.

THIRD PARTY VIEWS

26. The vast majority of third parties were unconcerned about this merger. One third party was concerned at the loss of a competitor. This concern is addressed above.

ASSESSMENT

27. This inquiry focused on the parties' overlaps in the EEA supply of both IBPM kits and cath lab packs and in the UK supply of IBPM kits. While the merged entity will be the second largest supplier of IBPM kits in both the EEA and the UK, its share is still relatively low ([20-30] per cent and [25-35] per cent respectively), numerous suppliers remain, and third parties were generally unconcerned. In respect of cath lab packs, there is no overlap in the UK, while at the EEA level, the merged entity has only a [20-30] per cent share of supply and will face competition from numerous other suppliers.

28. Consequently, the OFT does not believe that it is or may be the case that the creation of this merger situation may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

29. This merger will therefore **not be referred** to the Competition Commission under section 33 (1) of the Enterprise Act.