

## Completed acquisition by General Electric Company of Invision Technologies Inc

The OFT's decision on reference under section 22(1) given on 26 January 2005

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

### PARTIES

1. **General Electric Company (GE)** is a global diversified technology and services company active in numerous fields including aircraft engines, power systems, medical systems and financial services. GE is active in non-destructive testing (NDT) equipment. In the year ending 31 December 2003 its UK turnover was [...].
2. **Invision Technologies Inc (Invision)** is active in explosives detection systems based on x-ray, computed tomography and diffraction technologies and, at the time of completion (see paragraph 3) supplied x-ray NDT equipment through its subsidiary Yxlon. Yxlon's asset are located in the US, Germany, Denmark and Japan. Invision's UK turnover for the year ended 31 December 2003 is [...].

### TRANSACTION

3. The transaction completed on 6 December 2004. Post-merger, Invision became an indirect 100 per cent subsidiary of GE. However, GE did not intend to acquire material influence over Invision's x-ray NDT business Yxlon and therefore divested itself from this business on 17 January 2005.
4. The statutory deadline is 5 April 2005 and the extended administrative deadline is 3 February 2005.

## **BACKGROUND**

5. The EC Commission has previously considered NDT products when GE acquired Agfa's NDT business in 2003.<sup>1</sup> This case had been jointly referred to the EC Commission under Art. 22(3) by seven member states (but not the UK). The transaction was cleared by the EC Commission subject to GE's commitment to divest its ultrasonic NDT business which removed the overlap. The same transaction was subsequently cleared by the OFT.
6. The current transaction also involves x-ray NDT products and has been notified to the US Federal Trade Commission (FTC) and the competent authorities in Austria, France, Germany, Ireland, Italy, Portugal and Spain.<sup>2</sup> The German Federal Cartel Office (FCO) on 17 August 2004 cleared the merger subject to the divestment of Invision's Yxlon business. An essentially identical remedy was accepted by the FTC and the final consent decree was announced 15 September 2004. As noted above, this divestment took place on 17 January 2005.

## **JURISDICTION**

7. As a result of this transaction GE and Invision have ceased to be distinct. At the time of completion, the parties overlapped in the supply of portable NDT x-ray generating equipment with a joint market share of [60-70 per cent] in the UK. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

## **RELEVANT MARKET**

### **Product market**

8. At the time of completion, the parties overlapped in
  - x-ray based NDT equipment (prior to the divestment of Yxlon) and
  - explosive-detecting systems (EDS) (although see paragraph 19 below).

### *X-ray based NDT equipment*

9. NDT equipment is used for the examination of materials and components where the test piece is not destroyed. It is used to discover defects and corrosion in materials, to measure the thickness and hardness of the material and for the

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<sup>1</sup> Case No COMP/M.3136 – GE / AGFA NDT

<sup>2</sup> The transaction was also notified in the Czech Republic and Slovakia.

development of manufacturing processes and research. NDT equipment can be further sub-divided into portable and stationary equipment.<sup>3</sup> Several technologies are used in NDT equipment such as acoustic emission; infrared; liquid penetration; magnetic sensing; ultrasonic and x-ray. These types of equipment are not substitutable and, at the time of completion, the parties only overlapped in x-ray NDT equipment.

10. The parties have informed the OFT that, at the time of completion, they overlapped in the following segments of NDT x-ray business:
  - (i) Non-film NDT x-ray systems
  - (ii) Portable NDT x-ray generating sources
  - (iii) Stationary NDT x-ray generating sources

*Non-film NDT x-ray systems*

11. Non-film NDT x-ray systems consist of an NDT x-ray generating source, a computer system, digital equipment and software that transform the x-ray into a digital or other image on equipment not requiring the use of x-ray film. Unlike film, non-film systems can be used to capture moving images but are of inferior quality to systems using x-ray film. Non-film systems are often combined with devices that manipulate test pieces and automatic defect recognition software.

*Portable NDT x-ray generating sources*

12. These consist of portable lightweight equipment that emits NDT x-rays towards a targeted part. The resultant image can be examined for flaws. The parties report that these systems are used in areas that are difficult to reach such as the inspection of pipelines in the field.

*Stationary NDT x-ray generating sources*

13. Stationary NDT x-ray generating sources are large, heavy machines that emit NDT x-rays. The parties believe these are used where portability is not required and are utilised in a variety of applications ranging from aerospace parts manufacturing to automotive parts.
14. Due to the removal of the overlap following the sale by GE of Invision's NDT business Yxlon on 17 January 2005, there is no requirement for the OFT to come to a view on the relevant frame of reference for this sector of products.

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<sup>3</sup> Comp/M.3136 - GE/Agfa NDT, at paragraph 17.

### *Explosives-Detecting Systems (EDS)*

15. The parties overlap in the supply of equipment used to detect explosives and other illegal substances in airports and other high risk areas.
16. Invision produces systems which are used in airports for screening of checked-in passenger baggage. The systems scan the baggage for abnormalities and will generate an alarm if they are detected. The system is based upon x-ray images which are computer aided.
17. GE, through GE Ion Track, is involved in the manufacture and sale of trace detection products. These can detect both common explosives and illegal drugs and are walk-through or hand-held items used to check passengers and hand-held baggage.
18. Third parties have confirmed that x-ray screening and trace detection systems do not compete with each other. They are used for distinct purposes and are considered to be complements rather than substitutes. In particular, in respect of drug detection, one system can locate suspect items within baggage and where it is stored (x-ray systems) whilst the other can detect specific illegal substances but not where they are located (trace detection systems). Third parties have also pointed to the substantial cost differential that exists between the two with x-ray based systems costing [...]and trace detection systems costing [...].
19. The OFT therefore believes that pre-merger, GE and Invision did not act as a competitive constraint upon each other in the supply of EDS equipment, and there is, in fact, no direct overlap between the parties in this sector.

### **Geographic market**

20. The parties consider the relevant geographic scope of the market for x-ray based NDT equipment to be at least EEA-wide. In *GE/Agfa NDT* the EC Commission had found that stationary ultrasonic NDT equipment required significant after-market service which has been confirmed by third party evidence obtained by the OFT in this case. This might indicate a geographic frame of reference which is narrower than the EEA. The EC Commission ultimately left open whether the geographic market could be defined more narrowly than the EEA.
21. Given that following the divestment there is no longer any overlap between the parties in respect of x-ray NDT equipment or EDS equipment, there is no requirement for the OFT to come to a view on the relevant geographic frame of reference for this case.

## **HORIZONTAL ISSUES**

### **Market shares**

#### *X-ray based NDT equipment*

22. The parties have informed the OFT that, at the time of completion the parties' combined share of UK supply for non-film and stationary NDT x-ray equipment amounted to less than 25 per cent. With regard to portable NDT x-ray equipment in the UK, the parties accounted for [60-70 per cent] with an increment of [5-15 per cent] of the market ([65-75 per cent] with an increment of [15-25 per cent] on an EEA basis respectively). However, following the divestment of Yxlon, the overlap in stationary and portable x-ray equipment was removed.

#### *EDS*

23. As noted above, the view that x-ray screening systems and trace detection systems do not compete with each other is backed up by third parties who also confirm that several competing suppliers of EDS equipment will remain in both sectors post merger.<sup>4</sup> Due to the lack of overlap no horizontal issues arise in respect of EDS.

## **THIRD PARTY VIEWS**

24. No third party expressed any concern to the OFT about this acquisition.

## **ASSESSMENT**

25. At the time of completion, the parties overlapped in the supply of x-ray based equipment with a combined share of supply of [60-70 per cent] in portable NDT x-ray generators. However, the divestment of Invision's entire x-ray NDT business has removed any overlap in this field.
26. With regard to EDS equipment, the OFT's investigation has demonstrated that the parties' products are complementary rather than competing. In any event, several competing suppliers of EDS equipment will remain post-merger.

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<sup>4</sup> Invision consider their main rivals in EDS to be Smiths-Heimann and L3 and GE consider their main rivals in trace detection systems to be Smiths-Heimann and Thermoelectron.

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

## **DECISION**

28. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.