

Anticipated acquisition by Clinisys Solutions Limited of Torex Laboratory Systems Limited

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

Please note square brackets indicate figures replaced by a range or excised at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **Clinisys Solutions Limited (Clinisys)**, formerly known as **Sysmed Solutions Limited** (and prior to that as **William Woodard Associates**), is a member of the Varleigh group of companies. Clinisys is active in the market for Laboratory Information Management Systems (LIMS) and clinical applications for oncology, sexual health and diabetes.
2. **Torex Laboratory Systems Limited (Torex)** was a wholly owned subsidiary of **Torex Plc**, which acquired the business in 2002; Torex Plc is currently owned by iSOFT Group Plc (iSOFT). Torex comprises all employees, IPRs and existing contracts associated with the LIMS business of Torex Plc. In the year ending 30 April 2003, Torex's turnover was approximately £3.2 million (see note 1).

TRANSACTION

3. Clinisys proposes to acquire 100 per cent of Torex's shares.
4. Clinisys intends to integrate features of the Torex LIMS business with its own LIMS business to form Clinisys Pathology. In particular, Clinisys will incorporate some of the functionality of the Torex LIMS product in the Clinisys LIMS product. Clinisys intends to provide support and maintenance for existing users of Torex's LIMS product and to continue contractual arrangements with these customers for as long as it is commercially sensible, for both Clinisys and the customer, given that the expected remaining life of the Torex LIMS product is approximately 5

years. However, in respect of new customers, Clinisys intends to offer only one LIMS product.

5. The transaction was notified to the OFT on 22 November 2004. The 40 working day administrative deadline is 27 January 2005.

JURISDICTION

6. As a result of this transaction Clinisys and Torex will cease to be distinct. The parties overlap in the supply of LIMS in the UK. The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met since the parties have a combined share of supply of LIMS to private hospitals in the UK in excess of 25 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.

BACKGROUND

7. Following the acquisition by iSOFT of Torex Plc in 2004, the OFT accepted an undertaking from iSOFT to divest the Torex LIMS business instead of a reference to the Competition Commission (the iSOFT/Torex Decision).¹

RELEVANT MARKET

Product market

8. Clinisys and Torex overlap in the supply of LIMS to NHS and private hospitals. LIMS is a specific departmental IT system, designed to meet the requirements of a hospital's laboratory and to prompt clinical processes in the face of specific diagnoses and ensure best practice by clinicians in the laboratory.
9. The iSOFT/Torex Decision did not consider in detail the supply of Patient Administration Systems (PAS) and LIMS to private hospitals because the activities of the parties in that transaction did not overlap in respect of supply to private hospitals. Responses from third parties in this inquiry (private and NHS hospitals as well as competitors) indicate that essentially the same LIMS products are supplied to NHS and private hospitals. There is also considerable interaction between private and NHS hospitals in that NHS hospitals supply laboratory services (utilising LIMS) to private

¹ OFT decision on reference under section 22 given on 24 March 2004, Completed acquisition by iSOFT Group Plc of Torex Plc and undertakings given by iSOFT Group Plc to the Office of Fair Trading pursuant to section 73 of the Act (the Undertakings).

hospitals and vice versa. There may be a difference in scale in that private hospitals generally have smaller systems and (sometimes) different hardware requirements. Private hospitals may require billing functionality in their LIMS product, but the lack of billing functionality in certain LIMS can be addressed, for example, by using an interface module between the LIMS software and the billing/accounting software. There is therefore supply-side substitutability between the supply of LIMS to private and NHS hospitals.

10. On the demand-side, NHS hospitals in England may now face different minimum technical standards than other hospitals (NHS and private) due to the requirements of the National Programme for IT (NPfIT).² This is discussed further below.
11. As noted in the iSOFT/Torex Decision,³ customers buy LIMS as an IT package covering the upfront licence fee and implementation as well as future maintenance and servicing costs. Accordingly, competition in maintenance, servicing and upgrading of LIMS systems will be considered as part of the assessment of competition in selling the software systems themselves.
12. The relevant frame of reference in this case is the supply of LIMS to hospitals.

Geographic market

13. The iSOFT/Torex Decision⁴ noted that IT software for the healthcare sector can be developed anywhere in the world. UK public sector contracts in excess of £100,000 must be advertised in the Official Journal of the European Communities (OJEC) and this attracts bids from companies worldwide. While healthcare IT requirements can vary nationally (and regionally within the UK), such variations are minor and the key requirement in implementing and supporting a new system is a local presence.
14. Differences in the technical requirements of LIMS for NHS hospitals in England, which have arisen as a result of the NPfIT, may affect the scope of the geographic market. It is debatable whether, in the longer term, there will be greater alignment between the requirements of NHS hospitals in England and NHS hospitals in Scotland, Wales and Northern Ireland, as

² The NPfIT applies only to NHS hospitals in England.

³ See paragraph 21.

⁴ See paragraphs 23-24.

well as private hospitals in the UK. The impact of the NPfIT on competitive conditions throughout the UK is discussed further below.

HORIZONTAL ISSUES

NPfIT

15. The iSOFT/Torex Decision set out in detail the changes brought about by the NPfIT in respect of LIMS procurement in England. At the time of that decision, the OFT concluded that '[...] there is a real possibility that the NPfIT has not entirely eliminated future competition for PAS and LIMS' and '[s]cope for future competition appears to be greater in relation to LIMS than to PAS [...]'.⁵ In particular, at the time it was thought possible that the following opportunities for competition in LIMS supply to NHS hospitals in England would remain:

- the five Local Service Providers (LSPs) had not finalised the selection of their preferred LIMS provider and some LSPs had indicated that they might offer a choice of LIMS products/providers (or one main provider and one default provider);
- within the NPfIT, NHS hospitals in England might make their own choice of LIMS if they wished;⁶ and
- LIMS contracts might continue to be awarded by NHS hospitals in England outside the NPfIT for a longer period of time compared to PAS.⁷

16. Since the iSOFT/Torex Decision, a number of developments have taken place that have significantly curtailed the previously identified scope for potential competition in the procurement of LIMS:

- The four LSPs (one LSP has contracts for two of the five NPfIT regions in England) have now finalised the selection of their preferred LIMS

⁵ See paragraph 36.

⁶ The NPfIT differentiates between 'core applications' and 'non-core applications'. Core applications will be provided exclusively by LSPs. Non-core applications (such as LIMS) have to be financed by the NHS hospitals and will be provided by LSPs on a non-exclusive basis; i.e. non-core applications may, in theory at least, be provided by companies who have not been selected as preferred providers by the relevant LSP, provided that they are compatible with the LSP's core and other non-core applications and meet the functionality requirements imposed by the NPfIT.

⁷ This is dealt with under the heading 'Non-NPfIT expenditure in England' in the iSOFT/Torex Decision (see paragraphs 45-48).

provider and have all indicated that they will offer only one LIMS product.⁸ This LIMS product will have guaranteed interoperability with the core and non-core applications of the LSP in question, i.e. it will be LSP-compliant. CSC (LSP for North West/West Midlands region) and Accenture (LSP for the North East region and Eastern region) have appointed iSOFT as their preferred LIMS provider. BT (LSP for the London region) and Fujitsu Alliance (LSP for the Southern region) have selected Clinisys as their preferred LIMS provider. The LIMS contracts were awarded to Clinisys and iSOFT following competitive tendering and extensive testing. Due to their considerable buyer power, the LSPs were able to negotiate substantial discounts with the LIMS providers. For their part, the preferred LIMS providers were incentivised to make substantial investments to develop their LIMS product in view of the returns inherent in their status as preferred supplier.

- NHS hospitals in England can remain with their current LIMS supplier until the contract is due for renewal. However when contracts come up for renewal, it is to be expected that, for the reasons set out below, the NHS hospital (or group of hospitals belonging to the same NHS trust) will select the preferred LIMS product offered by its LSP. This is guaranteed to offer a holistic solution, integrated with the totality of the other core and non-core applications offered by the LSP for that region.
- Apart from this guaranteed functionality, it will also be much more cost-effective, for the reasons set out below, for hospitals to procure a preferred LIMS product:
 - i. due to their buyer power, LSPs have been able to negotiate a much lower region-wide price for LIMS – it is not to be expected that hospitals would be able to negotiate more favourable terms with a non-preferred LIMS provider;
 - ii. a non-preferred LIMS product must be approved by the NPfIT; this will entail significant cost in terms of development and testing;
 - iii. a non-preferred LIMS product must also be LSP-compliant. The parties have estimated that it will cost approximately

⁸ A preferred provider may be replaced in the event of non-performance of its contractual obligations. The parties maintain that this is extremely unlikely to occur because of the level of investment being undertaken by the preferred providers (iSOFT and Clinisys) to ensure that they meet their contractual obligations in full; such investment being possible due to the contractual assurance of future sales resulting from their preferred status.

[...] to test any one version of a LIMS to ensure that it is interoperable with the national database of electronic patient records. There are expected to be six versions of a LIMS over the nine-year life of the LSP contracts. It is not to be expected that an LSP would agree to bear such additional costs so the hospital or trust would need to bear these costs itself; and

- iv. an OJEC tender may be required, with associated cost and delay.
- The anticipated non-NPfit expenditure by NHS hospitals in England has not materialised; no OJEC procurements have been launched or recommenced (indeed, a number of OJEC procurements have been cancelled).
17. The expectation that the preferred LIMS providers will offer the best value for money appears to be supported by a procurement carried out recently by a consortium of hospitals including Northampton General Hospital. This consortium (covering four Trust areas) had embarked on an OJEC procurement for LIMS before the start of the NPfit. As a result of this process it had identified Torex as preferred LIMS provider. The procurement process was halted for a time to await developments under the NPfit; subsequently the nomination of Torex as supplier was withdrawn. The consortium spanned two LSP regions, one in which Clinisys was the preferred LIMS provider and one in which iSOFT was the preferred LIMS provider. While both Clinisys and iSOFT sought to supply the whole of the consortium, this was not acceptable to the LSPs (see note 2). The consortium ultimately awarded the contract to iSOFT and Clinisys through the LSP procurement framework, notwithstanding the rationale for a single LIMS.⁹ This suggests that hospitals are opting to meet their LIMS requirements via the LSP's preferred providers, thus obtaining the benefit of the competition that has occurred under the NPfit to be those providers.
 18. The developments outlined above indicate that there is now no realistic expectation that LIMS providers, such as Torex, who have not been selected by the LSPs will be able to compete for the supply of new LIMS contracts to NHS hospitals in England. In view of the limited opportunity for Torex to make sales to NHS hospitals in England, and the relatively low value and infrequent occurrence of contestable LIMS contracts in other

⁹ This example was put to us by the parties; in the time available we have been unable to verify it with the relevant hospitals.

parts of the UK (see below), Torex's incentives to develop its LIMS product have been greatly reduced.

19. Contracts under the NPfIT are expected to run for nine years. To be a viable competitor in the UK after this period of time, Torex would need to maintain, update and innovate its LIMS product continuously for the duration of the NPfIT/LSP contracts, to a position where it could compete with NPfIT and LSP-compliant systems. In view of the limited returns that can be expected in the intervening period, and given that Torex is not active to any significant extent in LIMS supply outside the UK, it is not to be expected that it would have an incentive to do this.
20. To the extent that there may still be scope for residual competition in the supply of LIMS within the NPfIT, this would be expected to take place as between Clinisys and iSOFT, the two preferred providers, who are at a substantial advantage compared to non-preferred providers in that their products are NPfIT and LSP-compliant. Triple G's LIMS product has also succeeded at the initial NPfIT 'proof of solution' testing stage and may also be able to compete within the NPfIT, if the opportunity to do so were to arise. Certainly, Triple G is better placed to win NPfIT contracts than Torex.

Competitiveness of Torex in the UK

21. In the iSOFT/Torex Decision¹⁰ the OFT noted that there was some doubt surrounding the competitiveness of Torex's LIMS product; in the intervening period this doubt has been confirmed:
 - In March 2004, Torex had not been selected as a potential LIMS supplier to any of the prospective LSPs but the final selection had not yet taken place at that stage. In the intervening period, the selection process has been finalised and Torex has not been appointed as preferred LIMS provider by any LSP. Moreover, all of the LSPs have now indicated that they will not be offering a choice of LIMS products.
 - In March 2004, it was noted that Torex had recently won two new LIMS contracts and had historic success as demonstrated by its share of the installed LIMS base. In the intervening period, no OJEC procurements have been (re)launched, and it appears that Torex has lost its status as preferred bidder for the Northampton General Hospital LIMS contract. As far as the OFT is aware, no private hospitals have engaged in LIMS

¹⁰ See paragraphs 38-39.

procurement in the past three years. The Clinisys business plan for Torex does not envisage any revenue from new contract wins.

- In March 2004, Torex had neither developed nor innovated its existing LIMS software sufficiently to complete 'proof of solution' testing under the NPfIT; in the intervening period, the incentives for it to do so have declined due to developments in the NPfIT. While many third parties contacted by us in this inquiry suggested that Torex's LIMS offering is a strong product that has been continually updated, the OFT now considers, for the reasons outlined above, that there is not sufficient incentive for Torex to bring the product in line with current requirements for integrated healthcare solutions, either within the framework of the NPfIT or outside it.
22. It is clear from the above that since the iSOFT/Torex Decision in March 2004, for reasons largely unrelated to Torex's performance as a LIMS supplier, the prospect of Torex as an independent competitive constraint in the supply of LIMS has declined significantly.
23. The OFT has considered whether an alternative acquirer of the Torex LIMS business could be expected to invest in and develop the Torex LIMS product to become NPfIT/LSP-compliant and therefore become a more effective competitor than with acquisition by Clinisys. While the OFT is aware that there are other potential acquirers, we do not have evidence that these potential acquirers would have the incentive and/or the financial resources to invest in the Torex LIMS product to make it NPfIT/LSP-compliant. [...]. Consequently, the relevant counterfactual against which to assess the merger – taking into account iSOFT's obligation to divest the business – is the Torex LIMS business as it currently stands.

Importance of other LIMS providers in the UK

24. The shares of supply of the main providers of LIMS to NHS hospitals in the UK are set out in the table on page 9.

Share of LIMS systems installed in NHS hospitals in the UK: December 2004

| | |
|------------------------------------|----------|
| Clinisys | [10-20]% |
| Torex | [10-20]% |
| Combined | [20-30]% |
| iSOFT | [40-50]% |
| Triple G | [1-10]% |
| Misys | [1-10]% |
| Technidata | [1-10]% |
| Others (including in-house supply) | [20-30]% |
| Number of LIMS installations | 213 |

Source: the parties, based on number of systems installed in public acute hospital trusts. Where two different suppliers supply LIMS to the same NHS trust this is counted twice, but where one supplier under one contract installs multiple systems this is counted once. This will lead to a small discrepancy between the number of installed systems and the number of NHS Trusts.

25. However, shares of installed systems may not be an accurate indication of market power because these are bidding markets where competition occurs for infrequent and large contracts. It is therefore appropriate in these circumstances also to assess market power by examining the contestability and degree of competition in recent procurements. The three providers that have won the majority of OJEC LIMS tenders since 2002 have been Triple G (two), Clinisys (three) and Misys (three), iSOFT and Torex each won one tender. Moreover, iSOFT may be particularly well-placed to compete in the UK going forward given its share of the installed base and its status as preferred LIMS provider in three of the five LSP regions; Triple G (a subsidiary of GE Medical Systems) is also in a better position relative to Torex because it has, at least, passed the NPfIT 'proof of solution' testing.
26. As noted in the iSOFT/Torex Decision,¹¹ there are a number of examples of actual entry in the UK LIMS market by overseas companies over the past 10 years or so, including TrakHealth, Misys, Triple G, Cerner and Technidata.
27. Multinational companies (e.g. TrakHealth, Misys, Triple G, Cerner and Technidata) are more likely to be able to meet the high investment costs required to bring their LIMS product up to NPfIT standard (or equivalent) than Torex, since they have substantial LIMS (and other) business in other English-speaking countries. This also means they have a greater incentive to maintain the competitive edge of their LIMS product, regardless of their status under the NPfIT. As they are active in multiple IT healthcare

¹¹ See paragraph 41.

markets, they are also more likely than Torex to be able to offer the integrated systems currently required by hospitals.

28. The iSOFT/Torex Decision¹² noted that customers at that time had expressed mixed views about the ability of these firms to compete with the merged entity. However, according to third party comment in this inquiry these companies are credible bidders for LIMS contracts who are regularly shortlisted in OJEC procurements. After the merger, these international players can be expected to act as a sufficient competitive constraint on the merged entity (and iSOFT) in LIMS supply in the UK, whether as existing or potential suppliers.
29. The iSOFT/Torex Decision¹³ also stated that there was evidence that competition between iSOFT and Torex specifically had been a driver of product development. However, the incentives for Torex to innovate have now decreased substantially and innovation is expected to be driven primarily by competition between Clinisys and iSOFT, as well as the other players identified above.

Supply to NHS hospitals in Scotland, Wales and Northern Ireland and private hospitals in the UK

30. The NPfIT does not extend to Scotland, Wales and Northern Ireland; nor does it apply to private hospitals in the UK. Nonetheless, as explained below, the effect of the merger on prospective competition in these areas must be assessed in light of Torex's reduced incentive to develop its LIMS products to NPfIT standard or equivalent.
31. It should be noted that the value of the LIMS market in Northern Ireland, Scotland and Wales is significantly lower than in England: there are approximately 42 NHS hospitals with a LIMS requirement outside of England, compared to approximately 170 NHS hospitals in England.¹⁴ The UK private sector is worth a fraction of the public sector. Although there are approximately 70 private hospitals in the UK that have a LIMS requirement, private hospitals are generally much smaller than NHS hospitals (perhaps 10 per cent of the size), with correspondingly lower systems values. The estimated spend on LIMS by all Nuffield Hospitals is said to be roughly equal to the spend by one NHS trust.

¹² See paragraph 41.

¹³ See paragraph 41.

¹⁴ The number of hospitals with a LIMS requirement does not equate to the number of contestable LIMS contracts because a number of hospitals may be supplied under a single contract; one hospital may also have a number of sites with a LIMS installation.

32. Clinisys has not won any LIMS contracts in Scotland, Wales and Northern Ireland. Torex has won contracts in all of the three regions. Since 1998 there have been four OJEC LIMS procurements by NHS hospitals in Scotland; two were won by Torex and two by iSOFT. Clinisys was only shortlisted (in a shortlist of five bidders) for one of the contracts won by Torex. iSOFT was shortlisted for the two contracts it did not win, as was Torex for the contracts it did not win. Since 1998, there has been one OJEC LIMS procurement by a Welsh NHS hospital; this contract was won by Torex and only iSOFT and Torex were shortlisted bidders.¹⁵
33. The merger eliminates possible bidding competition between Clinisys and Torex for NHS LIMS contracts in Scotland, Wales and Northern Ireland. However this theoretical loss must be assessed against the expected competitive decline of Torex's LIMS product and Clinisys's limited success in winning and being shortlisted for these contracts. Moreover, as noted above, there are a sufficient number of credible alternative suppliers of LIMS products in these regions, such as Triple G, Misys, Cerner and iSOFT. Following this merger, Clinisys will become a stronger competitor for LIMS contracts to the multinationals since it will be able to benefit from some aspects of Torex's LIMS technology and functionality as well as its existing customer relationships. In contrast to Torex (absent the merger), Misys, Cerner, iSOFT and Triple G will have strong incentives and the financial resources – given their existing installed base outside of the UK – to continue to invest in and develop their LIMS products to win business outside England.
34. The merging parties both supply LIMS to private hospitals in the UK. As noted above, the value of this segment is a fraction of that of the NHS segment. After the merger the parties will have a [90-95] per cent share of supply (with an increment of [40-45] per cent) in terms of the installed base in this segment. However this share of supply may not be an accurate indication of market power because these are bidding markets where competition occurs for infrequent and large contracts. Torex's [50-55] per cent share is due to the fact that it has won one contract to supply LIMS to BUPA, while Clinisys's share is due to the fact that it has three contracts, two of which are very small and one of which is to supply LIMS to Nuffield Hospitals (see note 3).
35. It is more meaningful in these circumstances to assess market power by examining the contestability and degree of competition inherent in the

¹⁵ As far as we are aware, no OJEC procurements have taken place in Northern Ireland since 1998.

procurement process.¹⁶ In this respect, competitive conditions in the supply of LIMS to private hospitals do not differ significantly from those pertaining in the supply of LIMS to NHS hospitals in Scotland, Wales and Northern Ireland, where there are a sufficient number of alternative bidders. Firms such as iSOFT, Triple G, Misys and Cerner will remain as effective rivals in bidding for private hospital LIMS contracts. Indeed, private hospitals may have a lower functionality requirement for their LIMS (in particular in terms of scalability) and this may further broaden the range of alternative LIMS suppliers to private hospitals.

36. To the extent that private hospitals in the UK and NHS hospitals in Scotland, Wales and Northern Ireland wish to acquire an NPfIT/LSP compliant system in the future (the iSOFT/Torex Decision refers to the 'ripple effect' of the NPfIT¹⁷), the merger does not reduce the number of bidders for these contracts because Torex does not currently have such a system and the incentives for it to develop such a system have been significantly reduced.

Buyer power

37. The NPfIT has increased buyer power of the LSPs but competition for this LIMS segment has effectively taken place (at least in respect of preferred suppliers).
38. In respect of private hospitals in the UK there are relatively few, large buyers. Four private hospital groups account for nearly all of installed LIMS and two hospital groups (Nuffield and BUPA) account for over [75-85] per cent of installed LIMS. NHS trusts are generally larger than private hospital groups and will have a similar or greater degree of buyer power, provided they have sufficient choice of potential LIMS providers. As mentioned above, the OFT believes that sufficient choice and effective competition will remain for these customers after the merger.

VERTICAL ISSUES

39. The transaction does not raise vertical or conglomerate competition issues. While Clinisys also provides information systems which support oncology, diabetes and sexual health services, there are no cross-selling advantages because the key purchasing decision makers differ for each product. Under

¹⁶ OJEC bidding data analysed in the context of the iSOFT/Torex decision shows that where the incumbent was known, it was displaced in 85 per cent of OJEC LIMS procurements.

¹⁷ See paragraph 51.

the NPfIT, the key decision maker for LIMS services is the LSP, while for other services the decision rests with the local service purchaser. None of the third parties contacted by the OFT raised vertical competition issues as a potential concern, either in the context of the NPfIT or outside it.

THIRD PARTY VIEWS

40. In the course of this investigation, the OFT consulted a large number of third parties, including NHS hospitals, private hospitals, consultants, LSPs, the NPfIT and actual and potential competitors.
41. The majority of third parties who were concerned were Torex customers. This can be explained by the concern that phasing out of the Torex LIMS product would have direct financial consequences for them. However this is not supported by Clinisys's intentions and incentives in the LIMS market. Clinisys has little incentive to phase out the Torex product before the end of its commercial life, especially as many of the Torex customers that it will take over are in regions where iSOFT is the preferred LIMS provider. Clinisys has indicated that the revenue stream from existing Torex LIMS contracts is an important driver for the transaction, and it is intended that the majority of Torex staff will be dedicated to providing the level of support and maintenance to which Torex customers have been accustomed. It is in Clinisys's interest to maintain high service levels to Torex customers, otherwise its reputation in the market will suffer and this will affect its ability to market its own LIMS system.
42. A number of NHS hospitals in England stated that they do not have an accurate picture of the effect of the NPfIT on LIMS procurement. This may have led them to overestimate their incentive to procure LIMS outside the framework of the NPfIT and, therefore, the importance of Torex as a competitive force in the future.
43. Some Clinisys and Torex customers expressed concerns that the merger would reduce choice and innovation. However, in view of changes brought about by the NPfIT (see competitive assessment) Torex would not have been an effective competitor absent this merger. A number of Clinisys customers noted that the merger would enhance Clinisys's position in the market and enable it to compete more effectively with iSOFT; it would also make it easier for Clinisys to fulfil its obligations under the NPfIT.
44. Consultants contacted by the OFT were generally not concerned by this merger. They noted the effect of the NPfIT in England and pointed to the number of remaining potential bidders in support of their view that LIMS

supply outside the NPfIT will remain competitive after the merger. One consultant noted that there are large economies of scale in LIMS; consolidation among the smaller players is therefore pro-competitive.

45. The LSPs contacted by the OFT and the NPfIT were not concerned by this merger.

ASSESSMENT

46. Further developments in the NPfIT since the iSOFT/Torex Decision indicate that there is now no realistic expectation that LIMS providers such as Torex which have not been selected by an LSP would be able to compete effectively for new LIMS contracts to NHS hospitals in England in the short to medium term.
47. In view of the fact that it is in practice very difficult for Torex to make sales to NHS hospitals in England under the NPfIT, and given the relatively low value of contestable LIMS business in the rest of the UK, Torex's incentives to develop its LIMS product independently have been significantly reduced. The importance of Torex as a continuing independent competitive constraint in the LIMS market has been reduced accordingly.
48. To the extent that competition remains outside the NPfIT, a sufficient number of credible bidders for UK LIMS contracts remain. These include iSOFT, Triple G, TrakHealth, Cerner, Misys and Technidata. Due to their multinational presence and their activities in the wider IT healthcare sector most of these companies have a greater incentive than Torex to maintain the competitive edge of their LIMS products and to compete for LIMS contracts outside the NPfIT. Moreover, the merger strengthens the ability of Clinisys to compete for these LIMS contracts and perhaps also to compete with iSOFT for contracts within the NPfIT.
49. While many third parties were concerned, the majority of these were Torex customers and their concerns were related more to the effect that any change of ownership might have on maintenance and support for existing Torex contracts than to any perceived lessening of competition as a result of the merger. While such concerns are understandable, existing Torex LIMS contracts are not part of the contestable market. Moreover, the OFT believes these concerns have been addressed by Clinisys's commitment (and incentive) to maintain the current support levels for existing Torex LIMS customers during the expected life of the product.

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

DECISION

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

NOTES

Note1: Torex PLC was re-registered as Torex Limited on 14 September 2004.

Note 2: The parties state that this was not acceptable to the Trusts, rather than LSPs.

Note 3: Five other hospitals with small laboratories use Clinisys's legacy LIMS product.