
Completed acquisition by Synergy Healthcare plc of Vernon-Carus Limited

ME/3448/07

The OFT's decision on reference under Section 33(1) given on 19 March 2008. Full text of the decision published on 29 April 2008

Please note that square brackets indicate figures or text that have been deleted or replaced with a range at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **Synergy Healthcare plc (Synergy)** is a listed company operating throughout Europe, South Africa, Thailand and Malaysia. It offers a range of support services and medical products to healthcare providers. Its activities are grouped in to three business areas: Surgical Support Services (including the provision of decontamination services for surgical instruments); Patient Care (providing a range of support services to acute, primary care and nursing homes, including linen management continence care and wound care); and Isotron Sterilisation Services (providing contract sterilisation services for medical device manufacturers and industrial companies).
2. **Vernon-Carus Limited (VC)** is a manufacturer and distributor of healthcare products, including surgical products, medical packaging, procedure trays, infection control, sharps bins and wound care. It is also active in the decontamination and sterilisation of surgical instruments. VC's UK turnover for the year ended 1 April 2007 was £29m.

TRANSACTION

3. Synergy made a recommended offer for the entire issued share capital of VC. The offer became unconditional as to acceptances on 13 November and the deal was completed on 19 November 2007. The total consideration paid was £24.4m including the assumption of £8.1m in debt.
4. The OFT examined this merger as a result of an unsolicited complaint. The administrative deadline for a decision was 11 March 2008. The extended statutory deadline expires on 28 March 2008.

JURISDICTION

5. As a result of this transaction Synergy and VC have ceased to be distinct. The parties overlap in the supply of commercial surgical instrument decontamination services and the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The parties' combined share of supply by value of commercial decontamination services in the UK is [30-40 per cent], an increment of [less than one per cent]. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

MARKET DEFINITION

6. The parties overlap in the supply of:
 - operating theatre gowns and drapes
 - wound care and infection control products, and
 - decontamination services.
7. For **theatre gowns and drapes**, the parties have a combined share of [below 5 per cent], with an increment of [below two per cent] in the UK. No concerns were raised and therefore this market has not been considered further.
8. For **wound care and infection control** products, the parties submit that they are active in different product markets. For example in wound care - Synergy supplies tubular grips, such as those used by sports players whereas VC supplies a comprehensive range of clinically-proven products for healing chronic and acute wounds, such as orthopaedic compression therapy and casting products. Whilst active in infection control, Synergy

supplies air sterilisation products, hard surface wipes, patient cleansing wipes and hand hygiene sprays while VC supplies alcohol-based hard surface disinfection wipes (Azowipe) and a hand hygiene product (Azoic). However these markets are defined the parties' strengths are in different product segments, with strong competitive restraints from supply by large multinational companies. No concerns were raised by third parties about these sectors, and therefore, the markets for wound care and infection control are not considered further.

Product scope

9. **Decontamination services** are a combination of processes, including cleaning, disinfection and/or sterilisation, used to render reusable surgical instruments safe for further use. Customers for such services include NHS acute hospitals,¹ private hospitals, independent sector treatment centres,² Primary Care Trusts (PCTs),³ and other clinics/surgeries.
10. Two previous acquisitions by Synergy in this sector have been considered by the OFT, namely *Synergy/Hays*⁴ and *Synergy/Shiloh*.⁵ The more recent case was the *Synergy/Shiloh* merger, which occurred at a time when the sector was undergoing considerable change driven by NHS plans to vastly increase the commercial supply of decontamination services in England. These changes are still in progress as the National Decontamination Programme (NDP).
11. The NDP was launched in 2003 to ensure that all NHS trusts in England have access to a satisfactory standard of surgical instrument decontamination services. It offers trusts the opportunity to switch from being in-house providers to being customers, by entering into joint venture public-private partnerships with private service providers. Each procurement project comprises a cluster of between two and eight trusts working collaboratively, with 80 trusts having signed up to the NDP in

¹ Acute trusts manage hospitals; some are regional or national centres for more specialised care. Others are attached to universities and help to train health professionals.

² Independent Sector Treatment Centres are treatment centres managed by the private sector that offer pre-booked day and short-stay surgery and diagnostic procedures for areas that have the longest waiting times, such as ophthalmology and orthopaedics.

³ Primary Care Trusts manage the care by GPs, dentists, opticians and pharmacists; NHS walk-in centres are also part of primary care.

⁴ Proposed acquisition by Synergy Healthcare plc of Hays Clinical Support Services, a division of Hays Commercial Services Limited (Decision dated 10 April 2002).

total. The first project put out to tender was the 'Pathfinder Project' covering Leeds, Bradford and Calderdale, which was awarded to B. Braun Medical Ltd in December 2005.

12. NDP contracts are awarded for a period of 15 to 20 years, the length of contract reflecting the level of capital expenditure required at the outset to build a decontamination facility. The terms and conditions of these contracts recognise that decontamination services are essential services which need to be maintained under all circumstances, and there are corresponding requirements for access to contingency provisions.
13. The intention behind the NDP was that bidders would generally provide new off-site facilities, offering suitable quality standards, capacity, and locational convenience relative to the different trusts involved in the collaboration. In limited cases, trusts are able to offer land or existing facilities to bidders if that is a viable option.
14. The NDP is now fairly advanced with respect to short listing of bidders for JV projects, with only a few projects yet to reach this stage, but is less advanced in respect of appointing preferred bidders and the final contract awards. Since the first procurement rounds, there has been a significant reduction in the number of potential bidders expressing interest in NDP projects. Some 12-13 parties expressed interest in the initial projects, but this number has now reduced to five active bidders (four post-merger).
15. Currently, the majority of NHS decontamination needs are still met by internal supply. NHS trusts which are not currently participating in the NDP have the following options:
 - within the first four years, trusts may join an NDP collaboration through a framework arrangement on the same average prices detailed in the successful bid
 - customers that join outside the framework arrangement have the choice of joining various collaborations in their vicinity with different individual service providers or outsourcing directly, outside the NDP, to a service provider, including inter-trust supply

⁵ Completed acquisition by Synergy Healthcare Limited of Shiloh plc (Decision dated 11 October 2005).

- they can continue to undertake the service in-house.
16. Some trusts already contract with commercial service providers for their needs on a localised, individual basis. This may be either through outsourced management of on-site decontamination facilities, or using the service provider's own off-site facilities.
 17. The parties accept that there are no obvious demand-side substitutes for decontamination services. They suggest, however, that self-supply (including inter-trust supply) and the ability of trusts to switch to disposable instruments serve to constrain prices. Synergy also suggests that from the supply-side, providers of other cleaning services or other outsourced services could easily commence the supply of decontamination services. However, this was not accepted by OFT in previous merger cases, and, on the basis of the evidence received by the OFT this is not credible given the technical expertise required.
 18. In the Synergy/Shiloh case the OFT considered the commercial supply of decontamination services to NHS hospitals as the appropriate frame of reference. It was considered that whilst in-house provision might place a competitive constraint on outsourced commercial provision, it was less clear how much of a constraint it would continue to place in the future due to the changes introduced by the NDP.
 19. In the current case, some third party competitors stressed that future demand from non-NDP customers (such as NHS Primary Care trusts, GPs, dentists, and private hospitals) was expected to be larger than the tendered (NDP) market as national minimum standards were rolled out to these other healthcare providers. Third parties have also said that non-NDP demand can be serviced from facilities established for the NDP provided there is sufficient available capacity.
 20. There is a distinction between outsourced management of on-site sterile and decontamination service facilities, and offsite decontamination services (including associated collection and delivery of instruments). []. However, VC does not appear to have been active in on-site facility management (and its plans indicated no specific intention to enter).
 21. The parties' overlap appears limited to off-site supply (whether through the NDP or otherwise), therefore this has been taken as the relevant product

frame of reference.

Geographic scope

22. In the earlier merger case, Synergy/Shiloh, the OFT took the view that the geographic market for the supply of commercial decontamination services was at least England, on the basis that bidders' locations were widely spread and they either set up or adopted local facilities in response to winning the relevant tender processes. This analysis appears to have been limited to consideration of competition for the large NDP contracts. Since that previous OFT decision, bidders for NDP tenders appear, generally, to have continued to express interest in, and submit tenders for, projects throughout England.
23. Third parties have suggested that the decontamination market should also be considered on a regional basis, as decontamination services are based on a limited turnaround time (maximum of five hours for fast track services), requiring facilities located within 30-40 minutes of the trust being supplied. A narrower geographic frame may, in particular, be relevant for smaller (non-NDP) customers, whose scale of demand is insufficient to warrant building a new facility, and are therefore reliant on the existing decontamination infrastructure.
24. Synergy submits that those competitors competing in the NDP in England also compete for contracts outside the NDP. However, a third party competitor stated that whilst there were no geographic constraints on competitive bidding for NDP projects, in the case of smaller projects (e.g. podiatry, PCT work) there were significant constraints in offering a service into an area where the distance to the reprocessing facility implied high logistics costs. One non-NDP customer suggested that 50 miles was appropriate for assessing competition – 'Distance is a key consideration in selecting a provider, as it has an impact on both transport costs, and more importantly on turnaround times and the guarantee that sterilised instruments can be turned around within the required time.'
25. Synergy does not believe that there are significant advantages from having existing regional capacity in bidding for new local contracts. It supplied examples of a number of contracts that it has won or that it services using capacity some distance from the source of demand. For example, Synergy contracts in North West England with [], are serviced from its Derby

facility, as is a contract with []. Synergy's contract with [] is a national contract []. Other contracts in London and North East England are serviced from Synergy's Glasgow facility.

26. Synergy's standardised instrument pack rental service, offered to PCTs, []. Turnaround times reflecting transport distance are therefore unlikely to curtail potential competition for this type of decontamination service, as long as alternative providers are prepared to offer sufficiently wide coverage from their facilities. However transport distance may meaningfully affect costs. A third party competitor said that a 40-mile collection/delivery distance (i.e. 80-mile round trip) can create transport costs 20 per cent above those of an 'on-the-spot' competitor (i.e. one with a facility within a couple of miles of the customer).
27. Data obtained from the parties indicate that most contracts supplied by their overlapping facilities in the North West region (Synergy at Aintree and Manchester; VC at Chorley) are relatively local, especially for customers requiring more than one daily delivery/collection of instruments. For such customers the average supply distance was 15 miles (range is three to 45 miles; median = 13.5 miles).
28. The NDP does not cover Scotland, Wales or Northern Ireland. Synergy has stated that the relevant health authorities have shown little significant interest so far in outsourcing non-clinical services. Synergy has [] in Scotland for decontamination services, with [], and is not aware of any other contracts which have been tendered. In Wales Synergy is aware of only one outsourced contract (Cardiff trust), held by InHealth, although it has had preliminary discussions with [] about a possible contract. In Northern Ireland it is not aware of any contract tenders. VC does not provide decontamination services to customers outside England, although it may have been reasonably placed to service customers in North Wales from its facility in Chorley.
29. While the appropriate geographic scope for considering NDP issues appears to be England, given the arguments put to us by third parties it is also appropriate to consider regional aspects of the transaction for non-NDP contracts given the parties' overlap in North West England.

HORIZONTAL ISSUES

The counterfactual

30. Synergy submits that the financial health of VC was fragile at the time of the acquisition in November 2007. The Merseyside NDP contract would have required VC to invest £9-10 million in an additional decontamination facility at a time when borrowing had become extremely difficult and the company was accumulating losses.
31. However, the OFT understands that VC was actively exploring refinancing options and had received two indicative offers of finance.^[6] It is therefore not obviously apparent that VC could not have continued as an independent entity given appropriate refinancing. The appropriate counterfactual therefore is taken to be the pre-merger conditions of competition.

Unilateral effects

32. Synergy is the leading UK commercial provider of decontamination services. It operates 14 decontamination facilities across the UK, [] and one in Scotland. VC has one facility, at Matrix Park, Chorley, in Lancashire, which opened in 2006.
33. Synergy estimates that UK commercial supply of decontamination services is currently worth £83 million. Its own current relevant annualised turnover is about [£20 – 30] million ([30-40 per cent] share), and it estimates VC's at [less than £1 million] ([less than one per cent share]). Market share estimates from different parties are complicated by the extent to which they include expected revenues from NDP projects which have been awarded (or reached Preferred Bidder stage) but not commenced.

NDP Issues

34. The value of commercial decontamination services will expand significantly as more of the NDP projects become fully operational. Synergy estimates the current total value of UK demand for all decontamination services

⁶ [Both offers were subject to due diligence, and one required a £1 million equity contribution by VC, which VC could not provide.]

(including internal supply) at approximately £400 million.

35. Therefore, shares of supply based on current turnover may be of fairly limited use in considering the ongoing competitive scenario since commercial supply is in the process of rapid expansion, which will continue as new NDP facilities come on-stream. Also, in a bidding/tender market historic shares may be a poor indicator of future competition. Therefore, analysis of bidding frequency and success may be more informative.
36. Competitors' responses setting out their rankings of competitive strength suggested that VC is generally seen as a weaker NDP competitor than Synergy, B. Braun and InHealth.
37. The merger reduces the number of current active NDP project bidders from five to four. Typically, the extent of unilateral effects concerns would depend on whether the merging parties are particularly important or close competitors (e.g. they are often both on final shortlists together). The following table therefore looks at bidder involvement and success for NDP projects.

Table 1: NDP project bidder involvement and success⁷

	Expressed interest	ITN⁸ stage	Final shortlist (ISFO⁹)	Preferred Bidder	Awarded
Synergy/Shiloh	[]	[]	[]	[]	1 (S. Manchester)
Vernon-Carus	[]	[]	[]	1 (Merseyside)	-
B. Braun Medical	[]	[]	[]	[]	2 (Bradford/Leeds; Birmingham)
InHealth Sterile Services	[]	[]	[]	[]	-
Decon Sciences	[]	[]	[]	[]	
<i>Total NDP tenders having reached this stage</i>	<i>[]</i>	<i>[]</i>	<i>[]</i>	<i>[]</i>	<i>3</i>

38. A number of other bidders have expressed interest and been short listed to ITN stages during the course of the NDP programme (e.g. []), but none have progressed to ISFO stage. Evidence received by the OFT suggests that many of these have withdrawn from tendering activity.
39. From the above table it can be seen that [] have had more success than [] in reaching the final shortlist stages of NDP tenders. VC had been appointed as Preferred Bidder on only one contract – Merseyside. The other final stage bidder for that contract was []. VC was able to bid for the Merseyside contract with the advantage of having an existing suitable site.

⁷ This table does not reflect the recent award of [].

⁸ Invitation To Negotiate.

⁹ Invitation to Submit Final Offer (usually only two bidders).

VC's announced intention¹⁰ was for the contract to be initially serviced from VC's existing facility at Chorley and a new unit to be built on the Wirral Peninsula. []. [].

40. For the [] contracts (out of [] that have reached preferred bidder stage) where [] is the preferred bidder, its rivals at the final stage were []. [].
41. The NDP programme is largely completed (in terms of attracting potential bidders for the various projects). Third party concerns about a reduction in the number of competitors present to re-tender in 15-20 years' time is beyond the timeframe of the present merger assessment, since it is impossible to forecast how the market might have developed by then, and how future tender processes might be run to maximise competitor numbers and competitive bidding. Potential competition in the future may come from Vanguard AG (German-based), as it has recently won a 12-year BMI¹¹ private hospital contract to operate a network of six central sterile supply facilities, which will provide relevant UK expertise and experience. Vanguard had also expressed interest in some of the later NDP tenders.
42. One third party competitor was concerned that alleged post-merger dominance enjoyed by Synergy in the North West could enable it to cross-subsidise bids in other regions (i.e. to compete more aggressively). However, this comment was made before []. []

Non-NDP issues

43. The merger combines ownership of VC's facility at Chorley, Lancashire with Synergy's existing facilities in the North-West at Aintree (Liverpool), and Tameside (Greater Manchester).¹² It has been put to us that the parties represented the only providers with commercial facilities in this area, with the nearest alternative commercial facility being B. Braun's facility at Pudsey, West Yorkshire, which is 55-60 miles by road away from Chorley.
44. Under a possible unilateral effects theory, the counterfactual to the merger is that VC would have been able to use spare capacity at its Chorley and (planned) Wirral facilities to compete actively with Synergy for non-NDP

¹⁰ Vernon-Carus Ltd press release: 1 November 2007.

¹¹ The UK's largest private hospital chain.

¹² Synergy's Half Year Report (December 2007) mentions its new decontamination and sterilisation facility in Manchester as having opened on 5 November 2007.

contract work, particularly in the North West region, since for customers in these areas, the parties' sites may represent the lowest (transport) cost alternatives.

45. VC's Chorley site opened in 2006 and, according to its press release on the Merseyside JV, prior to the merger was servicing hospitals throughout the North of England. VC's turnover in decontamination services for the year ended 1 April 2007 was [less than £1 million]. However, it was anticipating achieving further expansion in this area of activity.
46. Smaller customers (e.g. PCTs, ISTCs) outside the NDP are generally reliant on existing facilities to service their decontamination needs, and turnaround time requirements may limit the feasible distance over which they will seek a provider. Some concerns were raised that the merger creates or enhances Synergy's regional market power in the North West of England, since in the North West VC was the only identified alternative to Synergy.
47. Competitors have raised a concern that the merger will enable the merged entity to increase prices on contracts in the North West, and use additional profits generated to subsidise tendering activity elsewhere. Competitors have not said that the merger reduces their own ability to compete in the North West, but that it removes actual/potential competition between Synergy and VC which would otherwise have further constrained prices within the region.
48. As discussed above, there is some evidence of out-of-region supply to non-NDP off-site Synergy customers and one of VC's customers is in Carlisle, around 90 miles from Chorley. However, the Chorley site is actually the nearest available facility.
49. On the evidence available, the OFT believes that the scale of the potential impact of the merger on customers located close to the merging parties' facilities in the North West is limited, as there was little evidence of particularly active actual competition between Synergy and VC pre-merger – e.g. for one contract where the parties were identified as alternative providers Synergy did not express an interest.
50. As noted above (paragraph 41), Vanguard's UK subsidiary SterilPlus is now managing BMI's central sterile supply facility in Stockport, Greater Manchester. BMI and Vanguard press releases from January 2007 state

that SterilPlus will develop four new-build, high technology centres in Maidstone, St. Albans, Basingstoke and Birmingham. This national network (also including BMI's two established facilities in Glasgow and Manchester) would, it was claimed, provide fully compliant clinical sterile services to all 49 BMI hospitals and would have capacity to also serve other public and private sector hospitals within the regions.¹³ One VC customer was aware of SterilPlus as a potential supplier but had not explored the option due to the relative locations of the facilities.

51. []

52. In addition, during the course of our merger investigation [], []. []. [].

53. Whilst there may be some delay []. This [], together with the expansion of SterilPlus mentioned above, will, the OFT believes, alleviate any previous concerns third parties expressed about the reduction in competition for non-NDP contracts in the North West.

Coordinated effects

54. Bidders for contracts under the NDP have so far tended to submit bids across the full range of areas involved. Concerns have been expressed that going forward providers may not be inclined to bid actively for contracts outside their 'core' areas, and that this could develop into a type of geographic market allocation or sharing.

55. The merger strengthens Synergy's position with respect to facilities in the North West of England. It has been suggested that B. Braun and InHealth have established strong regional positions in Central England and the South East respectively.

56. The pattern of contract success and locations of relevant decontamination facilities will be known to the industry players. There is transparency over who has been successful in the tender process for each project (but not over the prices offered). Punishment for breaking with tacit market-sharing arrangements would consist of retaliatory bidding for other future contracts. However, given that the NDP programme is moving towards completion, with only one or two major JV projects yet to initiate the tendering process, it would appear that there is little scope for tacit

¹³ It is expected that the four new facilities will release capacity at SterilPlus' existing facilities.

collusion in respect of the remaining NDP tenders to be decided (since the 'repeated game' setting is in principle approaching its conclusion).

57. Competitive conditions surrounding non-NDP contracts, on the other hand, may be somewhat different. There seem likely to be large variations in contract value and turnaround time requirements. The set of potential competitors may therefore differ significantly between contracts. Difficulties that more distant providers face in competing effectively on costs and prices for individual local contracts are not merger-specific.

Barriers to entry

58. Evidence from the parties and third parties provide a mixed view as to the nature of barriers to entry. Synergy's 2007 Annual Report (p12) notes in relation to decontamination and sterilisation services– '... we are aware that new entrants to the market have encountered difficulties in meeting the required service standards. We continue to believe that there are significant barriers to entry and that over the coming years the UK market will consolidate with a small number of quality European competitors.'
59. Competitors have pointed to the existence of substantial barriers to entry in terms of set-up costs and infrastructure investment. The cost of building a single decontamination plant was estimated by one competitor at £4-6 million. However, these set-up costs do not have to be incurred before the bid is won. The Merseyside JV contract would have required VC to invest £9.6 million in building an additional facility. However, the annual value of the NDP JV contracts are substantial, in the range of £3-6 million per annum.
60. Various parties have also referred to significant costs involved in participating in the NDP tender processes (i.e. in preparing bids and responding to other requirements of the process).
61. The OFT considers that established European service providers may be the most likely new entrants, since they already have relevant experience and expertise. B.Braun entered the UK in this way and Vanguard/SterilPlus also appears to have entered UK activity on the back of an established wider European decontamination business.

62. VC itself was a relatively recent entrant to decontamination services, having seen it as an extension of its existing instrument and materials sterilisation processes.¹⁴ Decon Sciences has also entered since the OFT's Synergy/Shiloh decision in 2005. Synergy's submission points to the rapid establishment of new suppliers in recent years as corroborating the OFT's previous view that barriers to entry were modest.
63. However, given the lack of competition concerns considered to arise from this merger it is not necessary for the OFT to reach a conclusion on barriers to entry.

Buyer power

64. NHS bodies are the principal buyers of instrument decontamination services. The NDP aggregates the requirements of individual trusts into wider collaborations. One would normally expect that these wider collaborations and the use of a competitive tendering processes to impart a significant degree of buyer power to the NHS, as long as there were active alternative competing suppliers of the relevant services. Synergy has submitted that the buying power of the NHS in this sector is enhanced by the tender processes and price benchmarking used.
65. However, concerns have been raised about the impact of the merger, with respect to both a reduction (from five to four) in the number of active NDP bidders – notwithstanding that VC appears to have been a relatively weak bidder – and the degree of regional concentration in ownership of facilities in the North West.
66. The tendering process contains a provision for re-evaluating the tenders of the Preferred and Reserved Preferred bidders. []. This option [] indicate a degree of willingness by the NHS to utilise its bargaining strength.
67. On a regional basis, the ability of NHS (or other) customers to exercise buyer power will again depend on the presence of alternative competing cost-efficient suppliers. High levels of regional supplier concentration will typically work against this process.

¹⁴ VC website: 'As the UK's premier provider of sterile packs and wrapping materials, combined with our excellence in manufacturing, our customers see it as a natural evolution for Vernon-Carus to expand into the provision of decontamination services.'

68. However, evidence of buyer power has not been relied on for this decision and therefore it has not been necessary to conclude on this point.

VERTICAL ISSUES

69. It appears that Synergy's Isotron contract sterilisation services (for new and single-use instruments) are vertically related to surgical instrument and procedure tray supply in which VC is active. However, no significant vertical issues have been identified or raised with us.

THIRD PARTY VIEWS

70. The OFT's enquiry into this merger was prompted by a complaint. Serious concerns about the implications of the reduction in competition for the remaining stages of the NDP were expressed as well as for the re-tendering of contracts once current contract terms expire or are terminated.
71. Views from NDP customers were mixed, and were largely related to commercial issues. Smaller non NDP customers described a range of experiences with respect to pre-merger competition. Those requiring outsourced management of their on-site sterile services department did not identify VC as an active competitor. While substantive concerns about removal of local choice in off site provision were raised by a customer in the North West, these concerns were raised before [].
72. Competitors' views were mixed. Concerns were expressed about the future ability to compete in some areas of the UK where Synergy would have scale and transport cost advantages. It was also suggested that Synergy will be able to exploit market power in the North West as a consequence of the merger, and cross-subsidise its tendering activities elsewhere. One third party competitor did not anticipate that the merger would make much difference to the market.
73. All of these third party concerns have been considered and addressed above.

ASSESSMENT

74. The parties overlap in the supply of decontamination services in the UK.

75. The merger results in the loss of an independent competing bidder for ongoing and future NDP tenders, and for other non-NDP outsourced contracts, specifically in the North West of England.
76. Given VC's perceived status as a weaker bidder and the buyer power that the collaborations have, [], the OFT considers that there is not a realistic prospect that the merger will give rise to a substantial lessening of competition in relation to the national NDP. VC had been relatively unsuccessful in converting tender bids into short listings and contract awards. The third party concerns about the loss of potential competition appear in large part driven by a perception that the NDP has not retained as many actively participating tender bidders as had been anticipated or hoped for at the outset, which is not a merger effect.
77. VC's non-NDP activity was only a recent, albeit potentially successful, development. The merger brings together the two competitors currently best-placed (geographically) to serve non-NDP demand in the North West. However, [] – [] – and the expansion of the activities of SterilPlus will, the OFT believes, ensure that competition for non-NDP contracts in the North West will continue to be effective.
78. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

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