Completed acquisition by Getinge AB of Huntleigh Technology plc

The OFT's decision on reference under section 22(1) given on 1 May 2007. Full text of decision published 15 May 2007.

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

PARTIES

1. **Getinge AB (Getinge)** is a Swedish company listed on the Swedish stock exchange. It is a global provider of equipment and systems in healthcare and life sciences sectors. It is particularly active in extended care, infection control and medical systems. Getinge's worldwide turnover for 2005 was approximately £877m. Of this, approximately £96.7m, or 11 per cent, was realised in the UK by the Getinge subsidiaries Pegasus, Arjo and Maquet. For ease, all overlap products supplied by the Getinge subsidiaries are referred to as being supplied by Getinge.

2. **Huntleigh Technology plc (Huntleigh)** is a public limited company incorporated in the UK and listed on the London Stock Exchange. It is a well-established UK based group providing non-invasive healthcare devices and instrumentation for use in acute care and home care settings. Huntleigh is involved in the design, manufacture, distribution and rental of medical equipment world-wide, with representation in over 120 countries. Its business is divided into four main areas of operation:

    - pressure area care ('PAC') (products for the treatment and prevention of pressure wounds)
    - patient positioning and transportation (beds, stretchers, trolleys, hoists etc)
    - intermittent pneumatic compression (prevention of surgical deep vein thrombosis), and

- diagnostic and monitoring equipment.

3. Huntleigh's total worldwide revenue for 2005 was £199.8m. Of this, UK revenue accounted for £69.8m.

TRANSACTION

4. Getinge, through its subsidiary Getinge Extended Care UK Limited, acquired Huntleigh on 3 January 2007. The parties notified the acquisition on 8 January 2007. The statutory deadline expires on 5 May 2007. It has not been possible to meet the administrative deadline of 12 March 2007. The transaction has been notified and cleared in the USA and Germany. Additionally the transaction was voluntarily notified in Australia given the overlap in PAC products in Australia.

5. The rationale for the transaction stems from the largely complementary nature of the parties' international operations and product ranges. Getinge believes that the combination of the two businesses can collectively deliver an improved product and service offering to customers.

JURISDICTION

6. As a result of this transaction Getinge and Huntleigh have ceased to be distinct. The parties overlap in the supply of PAC products, amongst others, and the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met, as the parties have a combined share of supply of over 25 per cent. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

FRAME OF REFERENCE

Product scope

7. The merging parties have overlapping sales in the UK in five broad product areas:
   - PACs
   - healthcare beds
   - patient lifters
   - shower trolleys, and
   - patient transporters.

8. In **patient transporters**, the parties submitted that the transaction results in a minor increment, of less than 0.1 per cent, creating a combined share of around 25.1 per cent. Consequently this product area has not been considered further.

9. **Shower trolleys** are mobile units used for showering immobile patients. The parties and third parties submitted this to be the relevant product market.

10. **Patient lifters** are used to move (partially) immobile patients from one location to another. According to the parties, there are three broad types of lifters:
    - active floor lifts - mobile devices requiring some patient activity
    - passive floor lifts - mobile sling lift for fully immobile patients, and
    - ceiling lifts - fixed installations attached to the ceiling by way of mounted rails.

11. Although the parties submitted that they only overlap in the passive floor lift segment, the definition of the product scope has been left open and the competition assessment considers all patient lifters together, and by individual lift type.

12. **Healthcare Beds -** The parties have put forward a definition of healthcare beds, comprising general purpose beds, birthing beds and paediatric beds.

13. Some competitors, however, suggested that it was more appropriate to segment bed types by usage. In particular, they suggested the following broad classification of products:

    - hospital beds, and within that:
        - critical care beds, and
        - general ward beds

    - long-term care beds, used in nursing and care home environments.

14. Competitors that suggested this definition argued that critical care beds, used in high dependency hospital environments, are intended for highly immobilised and often intubated patients, and therefore require a variety of electronic features to move and relocate the patient. Beds on general

wards, they said, do not require the same technological features as those required in intensive care.

15. Competitors also noted that non-hospital beds for long-term care are more design-oriented and have more basic electronic features.

16. Competitors have suggested that supply side substitutability between the different usage areas is relatively easy, particularly moving from high-specification beds to the less sophisticated long-term care beds. However, costs of developing customer relationships in different market segments may be an issue, and indeed, it is clear from the figures the OFT has gathered that bed manufacturers have significantly different shares of supply across the different customer types. Therefore, applying a cautious approach, it is appropriate to consider the impact both on the supply of all hospital beds taken together, and by different usage segments as outlined above.

17. **PAC** products are used in the healthcare industry to treat and prevent pressure injuries in patients who are temporarily or permanently immobile. They consist of different types of mattresses designed to be capable of relieving pressure injuries.

18. The parties suggested that PAC products can be categorised by risk category, as summarised in table 1 below.

Table 1: PAC products by risk category

Risk category	Type of patient	Suitable products	Product retail price range
Very high risk	Hospitalised patients including: - burns victims - bariatric - totally immobile	- air fluidised beds - premium APM - high end low air loss mattresses	- £10,000 - £3,000 - £5,000 - £3,000 - £5,000
High risk	General ward hospitalised patients including: - surgical recovery - elderly - relatively immobile - poor blood circulation	- premium APM - alternating pressure overlays (those for use on top of a standard mattress) - high end foam mattresses	- £2,000 - £2,500 - £1,000 - £200
Medium risk	Hospitalised patients and those in nursing homes including: - elderly - poor blood circulation - relatively immobile	- low air loss mattresses - APM - alternating pressure overlay - high end foam mattresses	- £1,000 - £2,000 - £600 - £400 - £80 - £100
Low risk	Nursing home and home care patients with limited mobility	- static powered mattresses - foam mattresses and cushions	- £50 - £100 - £50 - £100

Source: Getinge assessment of PAC product efficacy. Figures based on internal market intelligence

19. However, the parties submitted that as the different PAC products are to a high degree substitutable - such that particular products are able to relieve a range of different pressure injuries - the relevant product market should be all PAC products.

20. In our view, it is possible to segment PAC products either by risk category or by product type. Third party responses received by the OFT indicate that different PAC products are all designed to treat the same injuries and that

there is in general a possibility of substitution between them. However, clinical preference may well mean that different PAC products are not necessarily perceived by some as good demand side substitutes. It may well be the case that the constraint in this case is asymmetric, with the prices of higher specification mattresses constraining those of lower specification ones. In this case, the OFT has taken a cautious approach and analysed all PAC products together, and, more narrowly, considering the three key product areas within the wider product category, namely:

- air fluidised beds
- air pressurised mattresses (APM), and
- foam mattresses.

21. In addition, the OFT has considered whether, even within the APM segment, there are, as one competitor suggested, different product scopes for intensive care, general ward care, and long term care. However, the OFT considers that, as some other third parties have commented, it is not costly or difficult for suppliers to alter product specifications and reposition themselves in different segments. In particular, evidence put forward by the parties of joint purchasing for intensive care and general ward care by a number of hospitals indicates that establishment of customer relationships to encourage a move from intensive care to general ward care, and vice versa, is not difficult.

Total bed management

22. The OFT also considered whether it is appropriate to define a separate product scope for the provision of 'total bed management' (TBM) contracts, which are tenders which combine the supply/maintenance of a range of different products, e.g., healthcare beds (frames), PAC and mobilisation aids.

23. From the supply side, some third parties commented that it can be relatively difficult to move from the provision of certain product types (e.g. PACs) into providing TBM unless a firm has a sufficiently broad and successful product portfolio. Third parties also submitted that it is very difficult to form consortia in order to bid for such contracts; it may also be the case that hospitals prefer a single supplier.

24. From the demand side, however, it is clear from the evidence before the OFT in this case that hospitals have a choice of putting to tender a TBM contract or separate contracts for different product types. Indeed, hospitals can and do vary the scope and size of the bundles of products that they put out to tender to respond to the supply conditions that they face. In addition, the OFT considers that it is unlikely that hospitals would consider TBM as an option unless it provided (financial) benefits compared to contracting separately for product supply. It is therefore unlikely that there is a separate product market for TBM, but the OFT has adopted a conservative approach and considered TBM contracts in its competitive assessment.

Nature of procurement

25. For PACs and hospital beds in particular, as well as considering the product type in question, the OFT has considered whether there are separate markets for outright purchases and for rentals. If a product is purchased outright ('capital sales') then after-sale service and maintenance is purchased either from the seller or another party. The parties made the point that they, and the other suppliers, will service a range of equipment from different suppliers – they all supply the required spare parts to each other. A rental agreement is, on the other hand, inclusive of a fixed term service agreement provided by that supplier.

26. On the basis that customers will also need to arrange some form of after-sales support if purchasing outright, in our view the rental service is not a separate market from capital sales. Any relative increase in the price of rentals means that customers would switch to outright purchase, with a service contract from the same or another manufacturer, and vice versa.

27. While some customers have suggested that budgetary constraints on a hospital at a specific time may provide a strong preference for rental rather than outright purchase (or vice versa), in our view supply side substitution from suppliers who offer after-sales service into rentals would be very easy. This was confirmed by third parties and the share of supply estimates provided by the parties which show that almost all suppliers are active in both sales and rental. The OFT did however consider whether the competition assessment would differ depending on whether one examined sales and rentals separately or together. However, since there was no observable divergence between them, the decision does not distinguish

between the different modes of procurement and reaches no firm conclusion on whether sales and rental form part of the same or different frames of reference.

GEOGRAPHIC SCOPE

Sales/rental of overlap products

28. The parties and third parties referred to a number of factors indicative of a wider-than-UK market in the supply of the overlap products. These include the presence of significant imports from EU and Asia at the manufacturing level, the need for NHS and other health service customers to advertise large contracts in OJEC, the relatively low transport costs of around 5 per cent of total purchase price and the tendency of manufacturers to centralise their manufacturing activities within one location in the EU.

29. Against this, however, some evidence before the OFT in this case suggests a narrower market may be appropriate. In particular, one third party suggested that the need to be able to provide after sales servicing and a rental capability may be a pre-condition for supplying UK customers. In addition, all the major suppliers operate from a number of regional depots located around the UK which indicates that a national presence, at least, is important.

30. The OFT has also considered whether the provision of rental and after-sale services may be narrower in scope than national. Third parties have said that rentals require a sales and servicing network, for installing and taking back rental products, and undertaking any necessary servicing during the rental period.

31. The lead-time for carrying out servicing and repairs varies by contract type; it is also a facet of competition and therefore varies by company. The parties have told us that servicing tends to be done on an annual basis; for repairs, response time is usually a matter of hours. The response time for Huntleigh's service work in support of the rental fleet and total bed management contracts is [ ] hours. With regard to separate service contracts and *ad hoc* maintenance and repairs, Huntleigh's service response time varies from [ ] hours from notification. Getinge has quicker response times, with the majority of cases reacted to within [ ] hours. Huntleigh said that for servicing and repairs, it was able to have longer lead

times than Getinge because it left its customers with a greater number of spare parts, enabling them to deal with smaller repairs themselves.

32. The lead times in question indicate that the market for service provision is unlikely to be wider than the UK. Indeed, for both parties, for PACs and healthcare beds, 80 per cent of service customers are within a 60 mile radius of a service centre. In addition, while there may be some more localised competition for smaller service contracts, evidence available to the OFT indicates that the major companies all seek to promote their ability to provide nationwide coverage. The parties suggested that it was very easy to add depots to a 'network' as additional contracts were won.

33. On this basis, it is appropriate to consider the relevant geographic scope for all overlap products to be national.

HORIZONTAL ISSUES

Shares of supply

34. **Shower trolleys** – According to the parties, Getinge is the second largest supplier of shower trolleys, and accounts for around 20 per cent of the market, Huntleigh, on the other hand, is one of a number of companies with a share of supply of around 5 per cent, giving a combined share of some 25 per cent. Chiltern remains the leading supplier, post merger, with an estimated 30 per cent share of supply in the UK.

35. **Patient Lifters** – According to the parties, Getinge is active in all types of patient lifters in the UK, while Huntleigh only manufactures passive floor lifts, where it is the seventh largest supplier in the UK and not included in the Procurement and Supply Agency's (PASA) list of accredited suppliers (see section on Buyer Power for further information). For all patient lifters the merger creates a share of supply of some [20 – 25] per cent (increment around [1-2] per cent). In the area of overlap - passive floor lifts - the merger creates a combined share of some [25-30] per cent (increment of less than 5 per cent).

36. The parties submitted that Getinge's passive floor lifters are vertically differentiated from those of Huntleigh. Most of Getinge's sales [more than 60 per cent] are accounted for by its Maxi Move products which had in the first half of 2006 an average price of [less than £4,000]; while Huntleigh

sells predominantly commodity passive floor lifters sold at an average price in the UK of [less than £1,000] (in 2005). Getinge's low-end product, Minstrel, which retails at [less than £1,000], did not achieve any UK sales in 2006.

Healthcare beds

37. **Healthcare Beds -** Huntleigh estimated that, with [30-35] per cent of the total market, it is the largest supplier of healthcare beds in the UK with two medium sized suppliers, Hill-Rom and Invacare, having between 15-20 per cent each and a long tail of smaller competitors. Getinge is estimated to be the fourth largest player in the market with about [less than 10] per cent. The post merger Herfindahl-Hirschman Index (HHI) is 2343, with a large HHI delta[1].

38. One third party provided estimates for healthcare beds broken down by product category – these are given in table 2. These figures were said to be based on figures taken from Huntleigh's annual reports and a market study prepared by Euromonitor. They also include beds which Getinge supplied through its distribution agreement with a Czech company, Linet (estimated by the third party to represent some [80-90] per cent of the total sales supplied by Getinge in the UK).

Table 2: Competitor estimates of healthcare bed shares, by product segment

	Critical care beds	**Medical/ surgical beds**	**Hospital total[1]**	**LTC beds[3]**
Huntleigh	51 %	61 %	57 %	41 %
Getinge	3-4 %	15 %	11 %	8 %
Huntleigh/ Getinge	54-55 %	76 %	68 %	49 %

Note: [1]Hospital beds comprise of critical care and medical/surgical beds.
[2]Allocated as any remaining share.
[3]LTC – long-term care

39. The parties were asked to segment the supply of healthcare beds on this same product basis and they provided the figures in table 3, below.

[1] See paragraph 4.3 of *Mergers-substantive assessment guidance May 2003 – OFT 516*

Table 3: Parties' estimates of healthcare bed shares, by product segment, 2005

	Critical care Beds	Medical/Surgical Beds	Hospital Total	Long Term Care Beds
Total Market	£5,253,000	£41,286,375	£46,539,375	£21,000,000
Huntleigh	[10-15] %	[25-30] %	[25-30] %	[30-35] %
Getinge	[5-10] %	[5-10] %	[5-10] %	[5-10] %
Merged Entity	[15-20] %	[30-35] %	[30-35] %	[35-40] %

Source: Getinge and Huntleigh internal data

40. The parties' estimate of total market value is based on the Department of Health's figures for the number of hospital beds of different types, and the parties assumption of a 15 per cent annual replacement rate - through purchase and rentals - together with estimates of average value of beds in each of these categories.[2] These figures closely match the market size estimates included in the Global Industry Analysts report, of £66m.

41. It is difficult, at first blush, to reconcile these two sets of figures. The figures from the competitor would appear to imply that the pre-merger position was one of quasi duopoly in the supply of healthcare beds to hospitals, with Getinge as the third player and very few other suppliers. However, this is not consistent with the responses that the OFT has received from suppliers and customers of healthcare beds. These responses indicate there are a number of suppliers that can and are invited to bid for contracts. While recognising there are no independently verified shares of supply in this market, on the basis of all the information it has received, the OFT believes that the figures provided by the parties more accurately reflect the structure of, and competition within, healthcare beds.

42. In addition, the parties have submitted that Getinge only manufactures a limited range of specialist beds designed for spinal and dementia treatment (Huntleigh does not manufacture similar specialist beds). The remainder of Getinge's bed sales in the UK are generated by dual-branded beds imported from a Czech supplier, Linet. The OFT understands that as a result of this merger Getinge and Linet have agreed to terminate the distribution agreement for healthcare beds. Getinge and Linet have agreed a planned transition over a [ ] period after the merger receives regulatory clearance so that at the end of the transitional period Getinge will no longer be supplying

[2] The total market size by volume of healthcare beds is kept updated by the Department of Health and private hospitals are estimated to account for a certain amount more, giving a total size of 3,502 critical care beds and 251,589 medical surgical beds. In addition, there are some 227,000 long term healthcare beds in registered care homes.

Linet beds in the UK. Linet currently distributes healthcare beds worldwide through third party distributors and on its own account. It will therefore be in a position to supply its beds to other UK distributors. Without the Linet contract, the increment for all healthcare beds resulting from the merger would be less than 1 per cent.

Pressure area care (PAC) products

43. **PAC** - As table 4 shows, on the basis of the parties' figures, the provision of PACs is fragmented, with a large number of players in the market. While many of these companies have low shares of supply, a number of them are mentioned by customers and competitors as credible suppliers. The merger brings together the first and the third largest suppliers of PAC products.

Table 4: PAC shares of supply in the UK, by value (2005)

	Total Revenue (£m)	**Rental revenue (£m)**	**Sales revenue (£m)**	**% share (total)**	**% share (rentals)**	**% share (sales)**
Huntleigh	[20-25]	**[ ]**	[ ]	[20-25] %	[ ] %	[ ] %
Hill-Rom	[10-15]	[ ]	[ ]	[10-15] %	[ ] %	[ ] %
Getinge	**[6-8]**	**[ ]**	[ ]	**[5-8] %**	[ ] %	[ ] %
MSS / Invacare	[6-8]	[ ]	[ ]	[5-7] %	[ ] %	[ ] %
Parkhouse	[6-8]	[ ]	[ ]	[5-7] %	[ ] %	[ ] %
KCI	[6-8]	[ ]	[ ]	[5-7] %	[ ] %	[ ] %
Vernacare (Karomed)	[5-6]	[ ]	[ ]	[5-6] %	[ ] %	[ ] %
Talley	[5-6]	[ ]	[ ]	[5-6] %	[ ] %	[ ] %
Select Medical	[4-5]	[ ]	[ ]	[3-4] %	[ ] %	[ ] %
Westmeria	[4-5]	[ ]	[ ]	[3-4] %	[ ] %	[ ] %
Harvest Healthcare	[3-4]	[ ]	[ ]	[2-3] %	[ ] %	[ ] %
Frontier Medical	[3-4]	[ ]	[ ]	[2-3] %	[ ] %	[ ] %
Sidhil	[2-3]	[ ]	[ ]	[1-2] %	[ ] %	[ ] %
Others[1]	[10-15]	[ ]	[ ]	[10-15] %	[ ] %	[ ] %
Total	106	[ ]	[ ]	100 %	[ ] %	[ ] %

[1] < 1 per cent total share each

44. As mentioned above, PACs fall into one of three product types:

- foam mattresses
- air Pressurised mattresses (APMs); and
- air fluidised beds.

45. This transaction raises no competition concerns in relation to foam mattresses and air fluidised beds. In the former segment, Getinge is currently the ninth largest supplier and would only add a small increment to Huntleigh's current [5-7] per cent share to give the combined entity a share of supply of some [6-9] per cent. Post-merger, the merged entity would, the parties' estimate, remain the third largest supplier behind MSS / Invacare (29 per cent share) and Hill-Rom (8 per cent). Moreover, Getinge does not manufacture its own foam products, but is only a non-exclusive distributor of MSS /Invacare products in the UK. In the latter segment there is no overlap as Pegasus (Getinge) does not supply air fluidised beds.

46. As in the PAC sector as a whole, for APM products the merger brings together the largest and third largest firms in what is, on the parties figures, a fragmented market. On the evidence available, Huntleigh does appear to be a slightly stronger player in APMs than in PACs more generally. The parties have an estimated combined share of supply for all APM rental and sales of some [35-38] per cent; of rentals of around [35-40] per cent; and of sales of around [30-35] per cent. These are shown in table 5.

Table 5: UK Shares of supply, APM, 2005

	Total Revenue (£m)	**Rental revenue (£)**	**Sales revenue (£)**	**% share (total)**	**% share rentals)**	**%share (sales)**
Huntleigh	**[18-22]**	[ ]	[ ]	**[25-30] %**	[ ] %	[ ] %
Hill-Rom	[10-15]	[ ]	[ ]	[12-15] %	[ ] %	[ ] %
Getinge	**[5-7]**	[ ]	[ ]	**[6-9] %**	[ ] %	[ ] %
Parkhouse	[5-7]	[ ]	[ ]	[5-8] %	[ ] %	[ ] %
KCI	[4-6]	[ ]	[ ]	[5-7] %	[ ] %	[ ] %
Talley	[4-6]	[ ]	[ ]	[5-7] %	[ ] %	[ ] %
Karomed	[4-6]	[ ]	[ ]	[5-7] %	[ ] %	[ ] %
Westmeria	[3-5]	[ ]	[ ]	[4-6] %	[ ] %	[ ] %
Select Medical	[3-5]	[ ]	[ ]	[4-6] %	[ ] %	[ ] %
Sidhil	[2-3]	[ ]	[ ]	[2-4] %	[ ] %	[ ] %
Harvest Healthcare	[1-2]	[ ]	[ ]	[2-3] %	[ ] %	[ ] %
Frontier Medical	[1-2]	[ ]	[ ]	[1-3] %	[ ] %	[ ] %
Others	[5-7]	[ ]	[ ]	[5-8] %	[ ] %	[ ] %
Total	78	[ ]	[ ]	100.0 %	[ ] %	[ ] %

47. Some third parties have suggested different ways of splitting the APM segment. For example by demand, e.g. intensive care, general ward and long term care, as a proportion of installed base, or on the basis of rental days – all of which give rise to different shares of supply. For example, a competitor suggested that the parties were the two main players in general ward care which created a combined share of supply as a proportion of installed base of some 80 per cent (increment around 39 per cent), while on a rental days basis the combined shares are estimated to be around 83 per cent (increment around 19 per cent). Responses from customers and competitors would suggest that these shares of supply are not credible, given the number of alternative suppliers available.

48. The parties stated that they were not aware of any reliable third party independent share of supply data for splitting the UK APM market between intensive care, general ward and long term care. The only publicly available, independent third party assessment of the global market for pressure wound products of which they were aware – the GIA Report[3] - estimated the total UK PAC market to be worth some £106m, in line with

[3] Global Industry Analysts Report, *Decubitus Ulcer Treatment Products 2005*

the parties' estimates. The parties' own sales data indicates the split of APMs between intensive care use and general ward/long term care to be in the region of one per cent and 99 per cent respectively; while general ward and long term care sales are split roughly 50/50. Applying those assumptions, the parties' believed that their maximum combined share for the general ward segment would be [some 35-40] per cent.

49. What is evident from the parties' internal documents is that they consider that they face a number of competitors in the 'wound care', i.e. PAC and hospital beds markets. The parties identified five key competitors in the UK APM market who have a share of supply of between 5-15 per cent - Hill-Rom, KCI, Sidhill, Park House and Talley, each of these competitors, the parties argued, has a product range, infrastructure, geographic coverage and credibility to compete as effectively with the merged entity as Getinge did with Huntleigh pre-merger. Responses from competitors and customers supported the view that there are a number of credible competitors to the merging parties; in particular they mentioned the companies listed above as well as Karomed, Westmeria, and Harvest Healthcare. The parties were able to supply details of APM accounts which had switched away from the parties to various competitors and these instances of switching were confirmed by our third party inquiries. There is also a long tail of smaller competitors in this market, for example, there are currently 22 accredited NHS PASA suppliers of APMs.

50. Bidding information on tender contracts provided by the parties and third parties indicates that a number of different companies bid for and win PAC contracts, although, in line with market shares, Huntleigh and Hill-Rom tend to win the majority of contracts.

TBM Contracts

51. As stated above, it is unlikely that TBM contracts form a distinct product market. However, the OFT has considered whether the merger would have a significant effect on competition for such contracts. The parties noted that Getinge was not a material player for TBM contracts having won only one such contract and that some six years ago. Comments from customers and competitors indicate that the major players for TBM contracts are Hill Rom and Huntleigh, although Getinge was one of a number of other possible bidders that were mentioned by third parties. On the basis of all the evidence before it, however, the OFT does not believe that the merger

affects competition for TBM contracts to any greater extent than for the overlap sectors mentioned above.

Buyer power

52. In terms of provision of PACs to the NHS, all competitors who responded indicated that they considered 'the NHS' (which is assumed from the comments to include health service customers in Wales, Scotland and Northern Ireland) to be a very powerful buyer and able to dictate the terms under which it is supplied.

53. The parties and competitors in particular suggested that the NHS Framework Agreement places limits on their ability to institute any unilateral price increases or service reductions. The Framework was put in place for three years in March 2006, and forms a centralised contract for all PAC products and services that an NHS trust may require. As part of the accreditation process, suppliers must submit details to PASA (now NHS Supply Chain (NHSSC)) of the terms on which products are supplied, including both a price ceiling and service floor. There is no scope for price increases during the first 12 months of the agreement, and price increases after this period are only allowed where the supplier can provide evidence to NHSSC of increased costs by submitting a comprehensive cost breakdown for the products in question. There is no scope for service reductions throughout the term of the Framework Agreement.

54. As the Framework Agreement provides a price cap under which health care trusts can, either alone or in consortiums, negotiate, this provides them with a degree of price protection. The parties have also pointed to the increased use of collaborative procurement, whereby a number of NHS trusts (normally within the same regional boundary) combine under one entity when procuring products to gain purchasing strength.

55. According to the parties, the Framework Agreement only applies to health service customers in England and Wales. However, Scotland and Northern Ireland have comparable centralised procurement arrangements. In Scotland, 'National Procurement' was launched in November 2005. It has adopted a strategy of reducing the number of accredited suppliers, and there are only three accredited APM suppliers, Hill-Rom, Huntleigh, and Parkhouse. Getinge was not accredited, having tried and failed to get listed. In Northern Ireland, the Central Service Agency (CSA) oversees

centralised procurement. It has four accredited APM suppliers, Huntleigh, Hill-Rom, Getinge and Talley (historically only four suppliers, at most, have been listed). This list is due to be renewed in July 2007 and the CSA has the ability to add new suppliers.

56. In relation to PACs, the parties have provided evidence of falling prices of PACs in recent years (this was confirmed by third parties who responded to our inquiries), which they argue are indicative of the bargaining position of the NHS. Notably, Getinge told the OFT that it dropped its rates for PAC products between [ ] per cent in its submission to PASA to ensure that it was accredited for the full range of products and services and is now bound to supply under the Framework Agreement at or below these prices. It also confirmed that in many cases the prices achieved in individual contracts are below the levels quoted by suppliers under the NHS Framework Agreement.

57. Third parties have also suggested a similar trend in relation to healthcare beds. For instance, a competitor told us that 'as a consequence [of large buyers' buyer power], prices in the healthcare beds sector are under extreme pressure'.

58. Much less evidence of potential concerns was presented to the OFT as regards private hospitals and care homes. The parties also stated that a number of private hospitals such as BUPA, and care homes providers, such as Southern Cross, centralise their supplies to be more effective purchasers.

Barriers to entry and expansion

59. Many competitors saw the main barrier to entry as being the procurement practices of the NHS. In this regard, a number of different points were made:
    - the need to have three years' accounts as a necessary condition for applying for the NHS Framework Agreement
    - NHS practices focusing too heavily on price factors, and
    - NHS favouring suppliers who offer a broad range of products.

60. The last of these is considered in the discussion of non-horizontal issues, below. As regards the entry barriers that may be formed by the NHS Framework Agreement, the parties argued that while it is an advantage for

a firm to be accredited, it is not necessary for successful entry. They pointed out that a noticeable absentee from the list of accredited suppliers is KCI, and that, in spite of this, it is the fifth largest supplier of APMs (sixth largest in PAC), and that it is therefore not necessary to feature on the NHS Framework to be successful.

61. Third party responses did not suggest that there were technological or IP barriers to the production of the overlapping products under consideration in this case. However, some third parties said that reputation was an important factor, in terms of acceptance by the customer. This involves the need for a professional sales force as well as the ability to offer strong service support, which can entail a big investment.

62. One third party estimated the cost of entry in PACs to exceed £2m; this might in turn enable the entrant to achieve a 5 per cent market share in 5-10 years. It suggested that a higher investment of £3-4m may get a company achieving the goal in 4-5 years.

63. The parties pointed to a number of instances of successful recent entry as evidence that entry is not difficult. They said that recent new entrants in APM include Westmeria Healthcare Limited and MSS / Invacare, both of which import products from Far Eastern suppliers in order to satisfy demand in the UK. Third parties identified Karomed as a recent successful new entrant in PACs.

64. On the basis of the evidence before us in this case, the OFT considers that new entry does not appear to be difficult. Expansion may well be easier, particularly for companies already accredited under the Framework Agreement. The parties and third parties have all said that it is easy to set up depots to service newly won contracts.

COORDINATED EFFECTS

65. The extent of fragmentation in the supply of overlapping products makes coordinated effects unlikely. The available bidding data shows the frequent presence of a number of different bidders. No third party has raised coordination concerns.

NON-HORIZONTAL ISSUES

66. A number of third parties suggested that the merger would bring together the parties' product portfolios to make them the 'dominant' player in terms of the provision of TBM contracts. The leading players in this sector are currently Huntleigh and Hill-Rom: Getinge has only one contract, won in 2001. While it may be the case that adding Getinge's portfolio of products to those of Huntleigh may enable the merged group to offer a wider portfolio of products under such contracts it is not obvious that this will lead to a reduction in competition. As mentioned above, it is clear that hospitals will only consider and enter into TBM contracts to the extent that they provide measurable benefits as compared to contracting separately for the required products. Thus, hospitals have no incentive to favour ever-wider contracts going forward if this would be likely to threaten the competitive process by leading to a reduction in the number of bidders for both TBM contracts and contracts for individual products.

THIRD PARTY RESPONSES

67. Third party responses have been varied. A number of competitors have expressed concerns that the merger would make Huntleigh a 'dominant' player. Most of these have been expressed in terms of the ability of the merged company to offer a strong portfolio of products to the NHS and therefore foreclose competitors in individual product offerings. Some customers also expressed concerns that the merger reduces their choice.

68. However, a number of competitors and most customers were unconcerned about the merger, and did not think that it would have an impact on pricing or service in the sector. This was mostly seen to be because of the presence of other competitors, actual and potential, and of the buyer power of NHS.

ASSESSMENT

69. The merger gives rise to an overlap in the supply of a range of healthcare equipment in the UK. In patient transporters, shower trolleys and patient lifters, the merger gives rise to a modest increment of less than 5 per cent with combined share no higher than [25-30] per cent. No competition concerns arise in these sectors.

70. The parties are also the first and third largest UK players in two product areas being PACs (APMs in particular) and healthcare beds. In healthcare beds, the vast majority of Getinge's previous sales in the UK are accounted for by a distribution contract with Linet, which is to be terminated as a result of the transaction. Therefore the actual increment arising from and attributable to the merger itself is much lower than the historic shares of supply suggest. With or without the Linet sales, the merger gives rise to an increment of, at most [6-8] per cent. There are two other suppliers larger than Getinge and a number of other suppliers of similar or smaller size. Given this market structure and the lack of concerns from customers, the OFT does not believe that the merger will give rise to a substantial lessening of competition in the supply of healthcare beds.

71. As regards APMs, there is some disagreement between the parties and some third parties' on Huntleigh's pre-merger shares of supply. Some third parties suggest there could be areas of APM supply where the parties' share could be over 60 per cent. The parties' estimates of shares of supply are supported by the independent GIA report and by the responses the OFT has received from other competitors. The available evidence indicates that there are a number of other credible competitors in the provision of APM, including Hill-Rom, Parkhouse, KCI, Talley and Karomed, so post-merger there are a sufficient number of alternative suppliers for customers. The NHS (and other central procurement agencies), which was the focus of most third party concerns, has a substantial degree of buyer power, and adopts purchasing practises aimed at maximising that advantage. The OFT also noted that NHS Scotland has not accredited Getinge for the supply of APM and for Northern Ireland Getinge is only one of four accredited suppliers. This indicates that the loss of Getinge as an independent supplier is not significant.

72. While there do appear to be some barriers to de novo entry, the number of players that exist already, and the evidence of recent entry in APM and PACs, is in itself an indication that they are not insurmountable. Expansion both across product areas and geographically would appear to be easy.

73. A number of third parties raised concerns regarding the portfolio of products that the merger of Getinge and Huntleigh brings together. In so far as there are contracts for TBM already, the available evidence indicates that Getinge was not a particularly effective competitor in this area. There is no evidence that indicates that parties will be in the unique position of

being able to force hospital customers to accept a bundle of products. While the ability to offer a broader bundle of products may have some advantages, it would not be in the interest of hospitals to favour ever-wider contracts if there is not sufficient competition in the provision of such contracts.

74. Consequently, on the basis of all the evidence it has received in this case, 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

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