OFFICE OF FAIR TRADING

Anticipated acquisition by BioReliance Corporation of Q-One Biotech Group Limited

The OFT's decision on reference under section 33 given on 16 September 2003

PARTIES

BioReliance Corporation (BioReliance) is the US parent company of the BioReliance Group. It is listed on the NASDAQ. BioReliance provides biosafety testing, toxicology and biomanufacturing services to customers in the biopharmaceutical and pharmaceutical industries. It operates from sites in the USA, Germany and the UK. Its subsidiary, BioReliance UK, is situated in Stirling in Scotland and is predominantly engaged in biosafety testing and biomanufacturing. In the year to 31 December 2002, BioReliance's UK turnover was approximately (see note 1).

Q-One Biotech Group Limited (Q-One) is principally involved in the provision of biosafety testing and biomanufacturing from its facilities in Glasgow and Edinburgh in the UK as well as the USA. Q-One has three subsidiaries: Q-One Biotech Limited, Q-One Biotech Inc and Quip Technology Limited. In the financial year to 31 March 2003, Q-One's UK turnover was approximately (see note 1).

TRANSACTION

BioReliance proposes to acquire the entire issued share capital of Q-One for approximately (see note 1). The transaction is conditional upon the merger obtaining competition clearance in the UK.

The transaction was notified by BioReliance on 22 July 2003. The 40 working day administrative deadline expires on 16 September 2003.

JURISDICTION

As a result of this transaction, BioReliance and Q-One will cease to be distinct. The parties overlap in the supply of biomanufacturing and biosafety testing and the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. It is therefore probable that a relevant merger situation will be created.

RELEVANT MARKET

Biomanufacturing is the production, purification and filling of gene therapy products; bacterial and mammalian products; viral vaccines and vectors for clinical trials; and licensed products. The parties submit that they will have a combined share of [less than

5] per cent (see note 2) of biomanufacturing services in the UK. Third parties have confirmed that the parties do not have a significant presence in biomanufacturing and no concerns were raised by customers. For these reasons the merger does not raise a significant prospect of a substantial lessening of competition in the supply of biomanufacturing services. These services are not considered further.

Product market

Biosafety testing refers to compulsory tests and studies required by relevant regulators around the world to ensure that there are no contaminants in biomedical products. The parties conduct around 300 different types of biosafety test. They have argued that toxicology is a type of biosafety test. However, most third parties did not agree.

On the demand side, biopharmaceutical products that have not undergone the specific tests required by regulators cannot be marketed or used in laboratory or medical trials. Therefore, there would appear to be very limited demand side substitution between individual tests. Customers' biosafety testing requirements can range from a variety of different tests to one single test. They usually obtain a quote for the price of each test that they require and often obtain a discount if they purchase a range of tests from a single supplier. Alternatively, customers can ask suppliers to bid for the provision of a package of tests. On the whole, customers have indicated that they would use a number of different suppliers if there was a 5-10 per cent increase in the price of a package of tests. Review of the parties' bidding data supports this proposition. Even where customers have asked for and received bids covering a wide range of tests, it is apparent that customers remain willing to select tests from a number of different suppliers in order to meet their requirements.

On the supply side, suppliers of biosafety testing range from firms, such as the parties, that provide a comprehensive range of biosafety tests; firms that provide a selection of biosafety tests as part of their principal business; and firms that provide a selection of biosafety tests in addition to their main business. The evidence suggests that the first and second category of suppliers would probably switch to provide a new test if there was sufficient demand. However, suppliers from the third category have indicated that it is unlikely that they would switch to providing other tests in the event of a 5-10 per cent increase in the price of those tests.

It also appears that some of the parties' larger customers conduct some biosafety testing in-house, some of which also provide testing services externally. However, these customers have indicated that they would be unlikely to increase the amount of in-house and / or external biosafety testing that they conduct in the event of a 5-10 per cent increase in the price of tests that they outsource. Similarly, customers that do not currently self supply have stated that they would not begin to do so in the event of a 5-10 per cent increase in the price of biosafety tests.

In this case, therefore, the most suitable frame of reference would appear to be outsourced biosafety testing excluding toxicology. It may also be necessary to consider the competitive constraints on the supply of individual tests if competition concerns arise in respect of a particular test.

Geographic market

There are no regulatory constraints to customers obtaining their biosafety testing requirements from anywhere in the world and regulators have equivalent standards worldwide. The most immediate competitive constraints on the parties come from other UK suppliers. Although it may take longer and cost more for customers to have tests conducted abroad, some UK customers have switched to supplying from continental Europe due to an increase in the price of tests in the UK. US based suppliers believe that they would also be able to win business in the UK in the event of a 5-10 per cent increase in the price of tests in the UK. In addition, most UK customers have indicated that they would source from abroad if the price of tests rose by 5-10 per cent in the UK. Therefore, in this case the most suitable frame of reference would appear to be worldwide.

HORIZONTAL ISSUES

Market shares

It has not been possible to obtain reliable share of supply data in this case. However, post merger, the parties will be the largest supplier of outsourced biosafety testing excluding toxicology both worldwide and in the UK. Worldwide, it is estimated that they will have a combined share of sales of around [30-40] per cent (see note 2) with [less than 10] per cent (see note 2) increment. There will continue to be a number of other suppliers, two of which are estimated to have a share of supply of 5 per cent or more. In the UK, their combined share would be around [20-30] per cent (see note 2) with a [10-20] per cent (see note 2) increment. Again, there will be a large number of remaining UK competitors which are highly fragmented.

Some of the parties' customers considered them to be each other's closest competitor. However, the parties have supplied evidence of bids won and lost which suggests that few of their customers switch between them. The data show instances in the UK of customers switching either to Inveresk or Covance, both of which provide a full range of biosafety testing services, or to smaller specialist firms that specialise in a limited selection of tests, such as Huntingdon Life Sciences. The parties also appear to face competition in the UK from continental European suppliers, such as Microsafe, Biological Labs and EUFETS as well as potential competition from firms in the USA, such as Charles River.

No evidence emerged that the parties would be particularly strong suppliers in any single biosafety test.

Barriers to entry and expansion

To start supplying biosafety tests, a new entrant would need to establish a testing facility with appropriate laboratory space, equipment and staff. It is estimated that it would cost around £200,000 to £500,000 and take up to one year for small scale entry (such investment producing a turnover of up to £2.5m after the third year of operation). Large scale entry is estimated to cost between £1m and £5m and take up to five years (to achieve a turnover of around £10m after three years).

The biopharmaceutical industry is reported to be growing at around 20 per cent annually[1]. The parties have supplied examples of five recent entrants which have all expanded to increase their range of tests over the past few years and the high level of sector growth may be expected to lead to increased demand for biosafety testing, which in turn can be expected to stimulate further new entry and expansion in the sector.

Buyer power

As noted above, some larger customers conduct biosafety testing in-house. However, most customers have stated that they would not increase their in-house supply in the event of a 5-10 per cent increase in the price of outsourced tests.

Larger customers may have some negotiating power to obtain lower prices because of the threat of switching and the use of competitive tendering to allocate business.

VERTICAL ISSUES

No vertical competition issues arise.

THIRD PARTY VIEWS

Most competitors were unconcerned and believed that the merger would enable them to win more business. However, some raised concerns that the merger would create a dominant supplier with the ability to predatory price. Most biosafety testing customers had some concerns that the merger may reduce competition.

ASSESSMENT

The transaction qualifies in respect of the share of supply test of the Act. The parties predominantly overlap in the supply of biosafety testing.

The parties will become the largest supplier of biosafety testing worldwide and in the UK. However, in the UK, there will still be a number of alternative full range providers and a large number of small specialist suppliers, which can be expected to continue to operate as a significant constraint on the parties and to which the parties have been losing business. The parties will also continue to face some competition from European suppliers as well as the prospect of potential competition from US biosafety testers.

The biopharmaceutical industry is growing significantly year on year. This is likely to stimulate further new entry and expansion in the biosafety testing sector, particularly as there appear to be no substantive barriers to entry.

For the above reasons, the merger is not expected to result in a substantial lessening of competition within a market or markets in the United Kingdom for goods or services.

DECISION

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

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[1] Chemical Week, November 2000

NOTES

1. Figures removed at the parties' request.

2. Actual figures replaced with ranges at the parties' request.