

Public version of the Interface Commitment submitted by GE in case COMP/M.3083 - GE/Instrumentarium - The public version of the Commission Decision of 2 September 2003 declaring the concentration compatible with the common market subject to compliance with the Interface Commitment and other commitments submitted in this case will be published once a non-confidential version is available

ANNEX 2

Case No COMP/M.3083 - GE/Instrumentarium: Interfacing Commitment to the European Commission

Without Prejudice

On 28 February 2003, General Electric Company ("GE") submitted a Form CO notification on a proposed concentration between GE and Instrumentarium OYJ (the "Parties") pursuant to Council Regulation (EEC) No. 4064/89 as amended by Commission Regulation (EC) No. 447/98 (the "Merger Regulation").

Pursuant to Article 8(2) and 10(2) of the Merger Regulation, the Parties hereby provide the following Commitments (the "Commitments") in order to enable the European Commission (the "Commission") to declare the acquisition of Instrumentarium by GE compatible with the common market and the EEA Agreement by a decision pursuant to Article 8(2) of the Merger Regulation (the "Decision").

Any term used in this text, unless otherwise defined, or unless the context indicates otherwise, shall be interpreted in the light of the Commission Notice on remedies acceptable under the Merger Regulation and under Commission Regulation (EC) No 447/98.

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SECTION A. DEFINITIONS

- Effective Date:** The Closing Date as defined in the Combination Agreement dated 18 December 2002 between GE and Instrumentarium, whereby GE will acquire sole control of Instrumentarium.
- GE:** General Electric Company, a company incorporated under the laws of New York, USA, with its registered office at 3135 Easton Turnpike, Fairfield, Connecticut 06431, USA.
- Instrumentarium:** Instrumentarium OYJ, a company incorporated under the laws of Finland, with its registered office at Kuortaneenkatu 2, 00510 Helsinki, Finland.
- GE/Instrumentarium:** The merged entity including both GE and Instrumentarium and all subsidiaries of those two companies.
- Therapy Devices:** Anaesthesia machines (including ventilator components) and ventilators.
- Patient Monitors:** Patient monitors for use in clinical critical care areas of the hospital, the operating room (OR) area and the adjacent clinical areas of the hospital. The term Patient Monitor shall include the parts necessary for the operation of the patient monitor, including data acquisition components, displays and input/output components.
- Clinical Information Systems (CIS):** Information systems, used in hospitals, for capturing clinical information and documenting activity at the point-of-care.
- Interface:** The possibility to either (1) electronically exchange data generated by (i) Therapy Devices for the purpose of combining with Patient Monitors or CIS or (ii) Patient Monitors for the purpose of combining with Therapy Devices or CIS or (2) physically mount monitors or CIS on Therapy Devices.

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Working Days: "Working days" within the meaning of Article 23 of Commission Regulation (EC) No 447/98 of 1 March 1998 (the Implementing Regulation).

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SECTION B. THE COMMITMENT

Open Interfaces

1. GE undertakes that
 - i. GE/Instrumentarium will keep the existing and future Interfaces of GE/Instrumentarium's existing and future Therapy Devices open, with respect to their combination with third party Patient Monitors or CIS.
 - ii. GE/Instrumentarium will keep the existing and future Interfaces of GE/Instrumentarium's existing and future Patient Monitors open, with respect to their combination with third party Therapy Devices or CIS.
 - iii. GE/Instrumentarium will keep the existing and future Interfaces of GE/Instrumentarium's existing and future CIS open, with respect to their combination with third party Therapy Devices and/or Patient Monitors.
2. These Commitments do not, however, prevent GE/Instrumentarium from developing integrated systems, provided that their Interfaces will remain open to additional third party devices, in accordance with Sections 1(i)-(iii) above.
3. An Interface shall be considered as "open" in accordance with Section 1(i)-(iii) above, if it provides third party suppliers of Therapy Devices, Patient Monitors or CIS with reasonable, safe, seamless and effective Interface options in accordance with regulatory requirements applicable in the EEA, industry practice and accepted industry standards.

The Interface options provided to third party suppliers of Therapy Devices, Patient Monitors or CIS, in accordance with Sections 1(i)-(iii), should adhere to a principle of non-discriminatory treatment and should be, as far as possible, given the characteristics of the third party Therapy Device, Patient Monitor or CIS respectively, equivalent to the options available to GE/Instrumentarium's own Therapy Devices, Patient Monitors or CIS.

For the avoidance of any doubt, GE shall not be required to provide an electronic Interface to third party products that do not have an ability to exchange information electronically.

Duty to Provide Interfacing Information

4. GE also undertakes that:

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- i. GE/Instrumentarium will make available to all Therapy Device, Patient Monitor or CIS suppliers or mounting solutions suppliers, which have made a request to receive such Interfacing information in relation to a product which they wish to Interface with a GE/Instrumentarium product in accordance with Sections 1(i)-(iii) above at any time following the adoption of the Decision, the Interfacing information and data, including for example the communication Interface protocol and other specifications, as well as any reasonably necessary ancillary technical clarifications, which are necessary to ensure an open Interface between GE/Instrumentarium's existing and future Therapy Devices and third party Patient Monitor(s) or CIS, between GE/Instrumentarium existing and future Patient Monitors and third party Therapy Devices or CIS and between GE/Instrumentarium 's existing and future CIS and third party Therapy Devices and/or Patient Monitors. This shall include the provision of any new Interfacing information relating to an Interface modification or upgrade of existing or future GE/Instrumentarium Therapy Devices, Patient Monitors or CIS without further request being necessary.
- ii. GE/Instrumentarium will provide this Interfacing information in English without undue delay. In particular as regards future or upgraded GE/Instrumentarium Therapy Devices and/or Patient Monitors, GE/Instrumentarium shall, having regard to the principle of non-discriminatory treatment and with the aim of providing third parties the opportunity to develop competing interfaces as early as GE/Instrumentarium, provide any new Interfacing information and data immediately from the time that the Interface information is sufficiently developed to enable a third party to develop an Interface and, in any event, no later than completion of product development. Further, GE/Instrumentarium shall respond to all written requests by third party suppliers for the receipt of Interfacing information pursuant to this Commitment within a period of 20 Working Days either providing the information or explaining why the information is not available.
- iii. GE/Instrumentarium will provide Interfacing information free of charge or at documentation cost, and on a non-discriminatory basis. Contact details for the provision of Interfacing information pursuant to this commitment should be advertised in GE/Instrumentarium's documentation and/or on its website, and reasonable technical assistance/consultation provided where necessary and at reasonable prices to enable third parties to understand and be able to use the Interfacing information to achieve an Open Interface in accordance with clause 1 above.

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- iv. With respect to the commitments set out in Sections 1(i) and 1(ii), GE/Instrumentarium will, if requested, make available, either at a GE/Instrumentarium location or on loan (whichever the third party requests) for a reasonable period which in any event should not be less than 3 months, the new device or the upgrade, as applicable, or a reasonable facsimile thereof, at cost, so that the third party can conduct necessary interoperability tests.
- v. GE/Instrumentarium will, if requested by a third party, keep all information received from a third party in the context of this commitment confidential and shall use this information only to discharge its obligations under this commitment and for no other purpose.
- vi. GE may request that a third party receiving information according to this provision be bound by a confidentiality agreement obliging that party to use the information for purposes directly related to this commitment and for no other purpose. In case of disagreement concerning the terms of the confidentiality agreement, the Commission shall have the power to decide its terms and GE undertakes that GE/Instrumentarium will enter into such agreement as required by the Commission.

Interface Certification Cooperation

5. GE undertakes that GE/Instrumentarium will, if the certification of a combination of GE/Instrumentarium Therapy Devices with third party Patient Monitors or CIS is requested by the third party supplier (including mounting solutions suppliers) or the customer, carry out reasonably necessary cooperation with this third party upon request, on a non-discriminatory basis and free of charge or at cost, and without undue delay. The cooperation will include examination and testing with original components of both suppliers, which may take place, for instance, at a GE/Instrumentarium location or by means of lending equipment. Records of the examination and testing will be available for both suppliers. GE/Instrumentarium's product literature or website will state that GE/Instrumentarium's relevant products have open Interfaces. The certification relates to the mechanical and electronic interoperability of devices according to the standards commonly used in the EEA or any EEA-country.

6. The above principles shall apply *mutatis mutandis* to a certification cooperation (if at all required) relating to the combination of GE/Instrumentarium's Patient Monitors and a third party Therapy Device or CIS.

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Duty to Provide Devices and Components

7. GE undertakes that GE/Instrumentarium will, if necessary to achieve an Open Interface in accordance with clause 1, provide third party suppliers of Patient Monitors, Therapy Devices or CIS with the necessary physical components at reasonable and non-discriminatory market prices.

GE further undertakes that GE/Instrumentarium will sell to third party suppliers of Patient Monitors, Therapy Devices or CIS GE/Instrumentarium Therapy Devices, Patient Monitors or CIS at reasonable and non-discriminatory market prices where this is necessary for demonstrations of interoperability to customers or at trade shows.

Monitoring of Compliance and Review

8. GE/Instrumentarium shall report to the Commission any matters which the Commission reasonably requests in order to determine whether GE/Instrumentarium has complied with this Commitment. Any such report shall be sent to the Commission within 15 Working Days from the date the Commission makes a request.

9. GE/Instrumentarium will appoint an independent trustee with sufficient expertise and powers to monitor compliance with the commitments. The appointment shall take place in time so that the trustee is appointed on the Effective Date or within 15 Working Days following a subsequent request by the Commission. The trustee and its mandate, terms and conditions shall be subject to the Commission's prior written approval. If GE/Instrumentarium fails to appoint a trustee within 15 Working Days following a request by the Commission, the Commission shall have the right to choose a trustee and GE/Instrumentarium shall appoint the trustee in accordance with terms and conditions as requested by the Commission. The trustee shall have the power to appoint an expert with expertise of the anaesthesia, ventilation and patient monitor industries including information technology aspects of those industries to assist the trustee in the discharge of its duties. Before appointing the expert, the trustee shall obtain the Commission's approval in writing. The trustee's and expert's remuneration shall be borne by GE/Instrumentarium.

10. In the event that a third party supplier has reason to believe that GE/Instrumentarium is failing to comply with the requirements of these Commitments vis-à-vis this third party supplier, the fast track dispute resolution procedure set out in Annex I shall apply.

11. The Commission may, in exceptional circumstances and where appropriate, in response to a request from GE/Instrumentarium showing good cause, waive, modify or substitute, one or more of the provisions of these Commitments at any time.

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24 July 2003

Signature

duly authorized for and on behalf of General Electric Company

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ANNEX I

FAST TRACK DISPUTE RESOLUTION

1. In the event that a third party supplier has reason to believe that GE/Instrumentarium is failing to comply with the requirements of the Commitments vis-à-vis this third party supplier and, in particular, has reason to believe that:
 - i. GE/Instrumentarium refuses or fails to provide an open Interface in accordance with paragraphs 1 - 3 of the Commitments; or
 - ii. GE/Instrumentarium refuses or fails to provide interfacing information in accordance with paragraph 4 of the Commitments; or
 - iii. GE/Instrumentarium refuses or fails to provide interface certification cooperation in accordance with paragraphs 5 and 6 of the Commitments;
the fast track dispute resolution procedure below will apply.
2. Any third party supplier who wishes to avail itself of the fast track dispute resolution procedure (a "requesting party") must notify GE/Instrumentarium in writing specifying the reasons leading that party to believe that GE/Instrumentarium is failing to comply with the requirements of the Commitments (the "Notice"). The requesting party and GE/Instrumentarium will use their best efforts to resolve all differences of opinion and to settle all disputes that may arise through co-operation and consultation within a reasonable period of time not to exceed fifteen (15) Working Days after receipt of the Notice.
3. Should the requesting party and GE/Instrumentarium fail to resolve their differences of opinion through cooperation and consultation as provided for in paragraph 2, the requesting party shall nominate an arbitrator.
 - i. GE/Instrumentarium shall, within two weeks of receiving a notification in writing from a requesting party of the appointment of an arbitrator, nominate its arbitrator and provide to the requesting party in writing detailed reasons for its challenged conduct.
 - ii. The arbitrators nominated by GE/Instrumentarium and the requesting party shall, within one week from the nomination of the former, agree to appoint a third arbitrator. If the arbitrators nominated by GE/Instrumentarium and the requesting party cannot agree on the nomination of a third arbitrator, they shall request that the President of the London Court of Arbitration appoint the third arbitrator.

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- iii. The arbitrators shall be instructed to establish an arbitration tribunal and to make a decision within one month of the appointment of the third arbitrator as to the compliance by GE/Instrumentarium with its obligation under the Commitments;
- iv. In their decision, the arbitrators shall also decide the action to be taken by GE/Instrumentarium in order to ensure compliance with the Commitments vis-à-vis the requesting party;
- v. Any of the arbitrators will be entitled to request any relevant information from GE/Instrumentarium or the requesting party in order to enable the arbitrators to reach a decision.
- vi. The burden of proof in any dispute under this fast track dispute resolution procedure is as follows: i) the requesting party must produce evidence of a prima facie case, and ii) if the requesting party produces evidence of a prima facie case, the arbitrator must find in favour of the requesting party unless GE/Instrumentarium can produce evidence to the contrary.
- vii. The arbitrators shall be instructed not to disclose confidential information. Throughout the Commitments the standard attributed to confidential information and business secrets are those as set out in accordance with European Community competition law.
- viii. The arbitration shall be in English and shall be conducted in accordance with the rules of the London Court of Arbitration and the rules of the London Court of Arbitration will be amended accordingly. In the event of disagreement between the parties to the arbitration regarding the interpretation of the Commitments, the arbitrators shall seek and be bound by the Commission's interpretation of the Commitments before finding in favour of any party to the arbitration.
- ix. All notices provided under the fast track dispute resolution procedure shall be in English and delivered between 09:00 and 17:00 on a Working Day.
- x. The arbitration award shall, in addition to dealing with the merits of the claim, impose the fees and costs of the prevailing party upon the party that is unsuccessful.