

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS  
TO AID PUBLIC COMMENT  
In the Matter of General Electric Company, File No. 041-0106**

**I. Introduction**

The Federal Trade Commission has accepted, subject to final approval, an Agreement Containing Consent Orders from General Electric Company, which is designed to remedy the anticompetitive effects resulting from GE's acquisition of InVision Technologies, Inc. Under the terms of the Consent Agreement, GE will be required to divest InVision's nondestructive testing ("NDT") business, including InVision's YXLON NDT subsidiaries, within six months after the date GE signed the Consent Agreement. The Consent Agreement also includes an Order to Hold Separate and Maintain Assets that requires GE to preserve the YXLON NDT business as a viable, competitive, and ongoing operation until the divestiture is achieved.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to a stock purchase agreement dated March 15, 2004, GE proposes to acquire InVision ("Proposed Acquisition"). The total value of the Proposed Acquisition is approximately \$900 million. The Commission's Complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the U.S. market for the research, development, manufacture, and sale of certain types of x-ray NDT and inspection equipment, specifically: (1) standard x-ray cabinets, (2) x-ray NDT and inspection systems equipped with automated defect recognition software ("ADR-capable x-ray systems"), and (3) x-ray generators capable of producing energy levels higher than 350 kilovolts ("high-energy x-ray generators").

**II. The Parties**

GE is a diversified technology and services company headquartered in Fairfield, Connecticut. GE is made up of a broad range of primary business units, each with its own divisions. GE Infrastructure, the business unit that proposes to acquire InVision, oversees the operations of GE's security and sensing, water technologies, and automation enterprises. Another business unit of GE, GE Inspection Technologies, designs, manufactures, and sells various NDT and inspection equipment, including x-ray, ultrasound and eddy current equipment under the Seifert, Pantak, Krautkramer and Hocking brand names. GE Inspection Technologies is headquartered in Hürth, Germany. The company's NDT and inspection products serve customers in the aerospace, energy, petrochemical and automotive industries.

Headquartered in Newark, California, InVision is the leading supplier of explosive detection systems (“EDS”) to the U.S. government for civil aviation security. InVision’s EDS devices are used at airports for screening checked passenger baggage. InVision also offers industrial NDT and inspection equipment through its YXLON subsidiary. YXLON, headquartered in Hamburg, Germany, was acquired by InVision in 2003. YXLON designs, manufactures and sells x-ray NDT and inspection equipment for use in a wide range of industries, including the aerospace, automotive, and security industries.

### **III. X-Ray NDT and Inspection Equipment**

GE and InVision, through its YXLON subsidiary, are the two largest suppliers of x-ray NDT and inspection equipment in the United States. X-ray NDT and inspection equipment includes, among other products: (1) standard x-ray cabinets; (2) ADR-capable x-ray systems; and (3) high-energy x-ray generators. X-ray NDT and inspection equipment is used to inspect the structure and tolerance of materials, or identify objects inside materials, without damaging the materials or impairing their future usefulness.

Standard x-ray cabinets are x-ray NDT and inspection systems with generic configurations and uniform prices. Standard x-ray cabinets are multi-purpose inspection systems, as opposed to customized systems that are designed for particular customer needs, or application-specific x-ray systems utilized for specific tasks such as tire or airbag inspection. A single standard x-ray cabinet is capable of inspecting a variety of products as diverse as, for example, metal die-castings, turbine engine parts, steel components, plastics and ceramics.

ADR-capable x-ray systems are inspection systems that utilize automated defect recognition, or ADR, software that completely automates the inspection process. Unlike traditional x-ray NDT and inspection systems that require a manual operator, ADR-capable x-ray systems eliminate the need to make subjective human decisions regarding the objects being inspected. The benefits of ADR-capable x-ray systems for customers are improved inspection quality, increased throughput and decreased labor costs.

High-energy x-ray generators are components of x-ray NDT and inspection systems that generate the power needed to produce an x-ray beam and display an x-ray image. There are different categories of x-ray generators that are distinguished by the amount of power they can produce. High-energy x-ray generators produce levels of power sufficient for x-rays to penetrate dense materials, such as steel, that other types of x-ray generators cannot produce.

Manufacturers and end users in a variety of industries use standard x-ray cabinets, ADR-capable x-ray systems, and high-energy x-ray generators for quality control and safety purposes. Purchasers of these products purchase the type of x-ray NDT and inspection equipment that is best-suited for their application and, because of the unique performance characteristics of each type of equipment, there is little opportunity to switch to alternative equipment. In fact, even a price increase of five to ten percent for standard x-ray cabinets, ADR-capable x-ray systems, or high-energy x-ray generators would not likely cause a significant number of customers for these

products to switch to any alternative product.

The United States is the appropriate geographic market for standard x-ray cabinets, ADR-capable x-ray systems, and high-energy x-ray generators in which to analyze the competitive effects of the Proposed Acquisition. Because x-ray NDT and inspection equipment frequently needs to be serviced and repaired to ensure proper operation, customers purchase from suppliers with local service and support networks. Furthermore, customers purchase from companies with a proven reputation for accurate and reliable equipment, and are reluctant to switch to a new company that does not have a proven track record for providing such service and support. Foreign suppliers that have not established the necessary service and support networks, brand reputation, and customer acceptance in the United States are not effective competitors for U.S. customers and would not be able to constrain a price increase for standard x-ray cabinets, ADR-capable x-ray systems, or high-energy x-ray generators in the United States.

The U.S. markets for standard x-ray cabinets, ADR-capable x-ray systems, and high-energy x-ray generators are all highly concentrated. GE and InVision are the two largest suppliers in each of these markets. If the Proposed Acquisition is consummated, GE would become the dominant supplier in each of these markets. For many customers, GE and InVision are the top two choices when considering a supplier of standard x-ray cabinets, ADR-capable x-ray systems, or high-energy x-ray generators. By eliminating competition between these two leading suppliers, the Proposed Acquisition would allow GE to unilaterally exercise market power, thereby increasing the likelihood that purchasers of standard x-ray cabinets, ADR-capable x-ray systems, and high-energy x-ray generators would be forced to pay higher prices and that innovation in these markets would decrease.

Significant impediments to new entry exist in the U.S. markets for x-ray NDT and inspection equipment. First, a new entrant would need to devote significant time and expense researching and developing a product. Second, a new entrant must undertake the lengthy and costly process of establishing a track record of reliability for its product. This track record is critical to customers because x-ray NDT and inspection equipment is relied upon to ensure the quality, performance, and safety of their products. Finally, a new supplier of standard x-ray cabinets, ADR-capable x-ray systems, and high-energy x-ray generators would have to spend a great deal of time and money to develop a broad service and support network upon which customers can rely. For these reasons, new entry into the markets for standard x-ray cabinets, ADR-capable x-ray systems, and high-energy x-ray generators is not likely to occur in a timely manner even if prices increased substantially after the Proposed Acquisition. Additionally, new entry into these markets is unlikely because the costs of entering these markets are too high relative to the limited sales opportunities available to new entrants.

#### **IV. The Consent Agreement**

The Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive

effects in the U.S. markets for the research, development, manufacture, and sale of standard x-ray cabinets, ADR-capable x-ray systems, and high-energy x-ray generators by requiring GE to divest InVision's YXLON NDT business. Pursuant to the Consent Agreement, GE is required to divest the YXLON NDT business, including the YXLON NDT subsidiaries, to a buyer, at no minimum price, within six (6) months from the date GE signed the Consent Agreement. The acquirer of the YXLON NDT business must receive the prior approval of the Commission. The Commission's goal in evaluating possible purchasers of divested assets is to ensure that the competitive environment that existed prior to the acquisition is maintained. A proposed acquirer of divested assets must not itself present competitive problems.

Should GE fail to accomplish the divestiture within the time and in the manner required by the Consent Agreement, the Commission may appoint a trustee to divest these assets. If approved, the trustee would have the exclusive power and authority to accomplish the divestiture within six (6) months of being appointed, subject to any necessary extensions by the Commission. The Consent Agreement requires GE to provide the trustee with access to information related to the YXLON NDT business as necessary to fulfill his or her obligations.

The Order to Hold Separate and Maintain Assets that is included in the Consent Agreement requires that GE hold separate and maintain the viability of the YXLON NDT business as a competitive operation until the business is transferred to the Commission-approved acquirer. Furthermore, it contains measures designed to ensure that no material confidential information is exchanged between GE and the YXLON NDT business (except as otherwise provided in the Consent Agreement) and provisions designed to prevent interim harm to competition in each x-ray NDT and inspection equipment market pending divestiture. The Order to Hold Separate and Maintain Assets provides that the Commission may appoint a Hold Separate Trustee who is charged with the duty of monitoring GE's compliance with the Consent Agreement. Pursuant to that Order, the Commission has appointed Hartmut G. Grossmann of H. Grossmann Consulting LLC as Hold Separate Trustee to oversee the YXLON NDT business prior to its divestiture and to ensure that GE complies with its obligations under the Consent Agreement. Mr. Grossmann, who holds law degrees from both the United States and Germany, has more than 25 years of experience advising and managing companies both inside and outside of Germany. He has held several key management positions, including chief counsel, managing director, and chief operating officer, and during his professional career has developed experience related to corporate governance, litigation, business integration and restructuring, and regulatory compliance matters.

In order to ensure that the Commission remains informed about the status of the YXLON NDT business pending divestiture, and about the efforts being made to accomplish the divestiture, the Consent Agreement requires GE to file periodic reports with the Commission until the divestiture is accomplished.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and is not intended to constitute an official interpretation of the proposed Decision and Order or the Order to Maintain Assets, or to modify their terms in any way.