European Commission
Directorate-General for Competition, Unit A-2
White Paper “Towards more effective EU merger control”
B-1049 Brussels

Email: comp-merger-registry@ec.europa.eu

Reference: HT.3053 – “Towards more effective EU merger control”.

DANSK BIOTEK appreciates the opportunity to comment on the European Commission’s consultation document: “Towards more effective EU merger control”.

DANSK BIOTEK is an industry association of Danish companies, whose core area is biotechnology applied to drug research and development. The association has more than 100 members, who represent the biotech industries and their investors.

DANSK BIOTEK’s response focuses on the proposed new regime regarding non-controlling minority shareholdings and the consequences hereof on availability of corporate venture capital for developing biotech companies.

DANSK BIOTEK recommends that the EU Merger Regulation ("EUMR") regime is not amended as proposed in the White Paper.

A notification requirement as suggested for acquisition of non-controlling minority shareholdings would generate additional restraints on biotech companies abilities to attract corporate venture capital, which is crucial to maintaining a global leverage in the field, especial amongst emerging European biotech companies.

Furthermore, the Commission already has the power to investigate most if not all structural links under Article 101 TFEU and Article 102 TFEU.

1. New and developing biotech ventures have over the last decade experienced a shortage of fresh capital. Several traditional VC funds are shifting their investments away from the high-risk, early-stage financing of biotech start-ups and into later-stage opportunities and existing portfolios. VC funds specialising in early-stage biotech investments have subsequently become increasingly more selective and unable to meet the greater demand for patient capital.
In the wake of this development, corporate venture capital has come to play an important role in the capitalisation of new biotech companies. Corporate venture capital was involved in 19.4% of all deals in 2011 and accounted directly for almost 10% of the totally invested amount\(^1\). Often pharmaceutical corporate venture funds syndicate investments in biotech with traditional venture investors, where the highly specialised market knowledge of the corporate ventures is a prerequisite for the participation of the traditional venture investors. Frequently, corporate venture funds from different pharmaceutical companies participate in the same syndication.

In addition to capital, corporate venture funds offer an invaluable access to industry intelligence, which are essential for developing the right strategies in biotech companies.

It is vital for the continuous development of biotech sector that availability of “intelligent” capital is not hampered by regulatory initiatives, which discourage investments being made in biotech companies.

2. There is a significant risk that the proposed amendments of the EUMR regarding non-controlling minority shareholdings will reduce the amount of high-risk, “intelligent” capital available for biotech.

A requirement for “information notice” with any >5% minority investments that have a “competitively significant link” would inevitably demand a comprehensive collection and assessment of information that would not otherwise be involved in the transaction.

This information collection would increase the transactional costs, which will reduce the capital available for developing the company. Especially with each participant in the syndicated investment having to comply with the requirements. It is noted that many corporate venture investments even above 5% ownership are on EUR 1-digit million levels only. If investigation procedures were to be opened the biotech companies would be burdened with significant additional costs, which do not serve a purpose as long as the current EUMR is complied with at a parental level.

Especially with emerging biotech companies, capitalisation regularly has to be dealt with at the fast pace, and hence a 15 days hold on the final closing would in same cases create problems for the biotech company.

Intellectual property rights and trade secrets, including revenues, customer segments and future product portfolio are key assets in most biotech companies. An obligation to publicise this in an information notice, might dilute the value of the company significantly or cause the biotech company to seek non-industry knowledgeable capital.

The dynamic nature and agility of small biotech companies might cause sudden changes of strategies, opportunities in new market, changes in technology application etc. The risk of the

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authorities commencing investigations up to 6 months after the information notice will potentially collide with this, and might cause the corporate venture fund to restrain the activities of the biotech company in order to be able to invest.

Corporate venture investments are not structurally motivated by a possibility of impacting competition in the internal market through concentrations\(^2\). The primary drivers of such investment are a strategic interest in following innovation in the industry. Furthermore, the Commission already has the power to investigate most if not all structural links under Regulation 1/2003.

3. Referring to the above DANSK BIOTEK recommends that the proposed amendments of the EUMR regarding non-controlling minority shareholdings be not implemented.

Yours sincerely,

[Signature]

Martin Bonde
Chairman of the Board
DANSK BIOTEK

cc. Minister for Business and Growth Henrik Sass Larsen

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