GSK/SR One response to the European Commission’s White Paper
“Towards more effective EU merger control”

GSK and SR One welcome the opportunity to comment on the European Commission’s consultation document: “Towards more effective EU merger control”. GSK is a science-led global healthcare company that researches, develops and supplies a broad range of innovative Pharmaceuticals, Vaccines and Consumer Healthcare products. SR One is the corporate venture capital arm of GSK, making investments globally in emerging life science companies. Founded in 1985, SR One invests globally in early stage healthcare companies pursuing innovative science. SR One does not invest strategically, operates strictly fire-walled from its parent company, and does not grant special rights to GSK in any investment company. In 2005, SR One opened an office in the UK to increase its focus in Europe and at any one time has between 20 and 50% of its total capital allocated to European investments. To date SR One has invested more than $800M in over 100 biopharmaceutical companies in Europe and the US.

This 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.

We believe that the proposed change would have a significant and detrimental impact on the ability of early stage, innovative biotech companies to attract corporate venture capital, which, given the nature of the current funding environment in Europe for such companies, is often vital for their success and sometimes vital for their survival. We recommend that the EU Merger Regulation (“EUMR”) regime is not amended as proposed in the White Paper and that minority investments made by venture capital (VC) funds, including corporate funds, in developing and small companies are excluded from its scope. This could be achieved by excluding investments made in start-up, developing and small companies that have no marketed products or turn-over and are therefore critically in need of venture capital funds for their continued growth and development.

In the following, we would like to expand on (1) the role of corporate VC funds, (2) the consequences of a change of the regulation if the proposed changes are adopted as currently outlined in the white paper, and (3) our recommendations.

1. The role of corporate venture capital funds

The role of corporate VC funds has become more important as traditional VC funds are shifting their investments away from the high-risk, early-stage financing of biotech start-ups into later-stage opportunities and supporting their existing portfolios. The small number of remaining 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 VC has come to play a critical role in the capitalisation and development of new biotech companies. Across all sectors, corporate venture capital was involved in 19.4% of all deals in 2011 and accounted directly for almost 10% of the totally invested amount\(^1\). This is confirmed by the chart below\(^2\) that looks at the period 2009-2013 and shows that early stage companies pursuing next generation biotechnology and drug development technologies are to a large extent reliant on funds provided by corporate VCs for their growth and development.

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\(^2\) EVCA/PEREP_Analytics, 2013
Indeed, in the biotech sector in Europe, investments by corporate VCs accounted for more than 40% of first-time syndicates in 2012 (42%) and 2013 (48%)

and have thus become instrumental in the creation of new companies and supporting innovation in the sector.

2. The consequences of a change of the regulation if the proposed changes are adopted

The proposed changes could have a significant impact on the ability of both biotech companies to attract the investment they need and of corporate VC funds to invest in new and innovative biotech companies. Below we would like to address the potentially harmful points one by one.

Assessment of competitively significantly link:
This would require a comprehensive collection and assessment of information that would not otherwise be involved in the VC transaction. Thus information collection would increase the transactional costs, which will reduce the capital available for investment in developing the company, especially with each participant in a 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 as proposed the biotech companies would be burdened with significant additional costs and time consuming procedures, which do not serve a purpose as long as the current EUMR is complied with at a parental level.

15-working day information notice:
VC backed biotech companies typically require several rapidly executed financing rounds. Given the nature of their business, the companies need to maintain confidentiality to protect their proprietary position. Both of these aspects would be compromised if the new plans were implemented.
Each VC investment round usually occurs not long before the start-ups’ funding from the previous round runs out. Since the start-ups are exclusively loss-making companies, it is crucial that funds can be raised quickly and flexibly, requiring investors to be able negotiate and act in real time. There is generally no time for complex structures or agreements to be set up. As such, a 15-day hold will create a significant barrier to successful financing and of biotech companies and considerable administrative burden for corporate VC funds.
Also, intellectual property rights and trade secrets, including projected revenues, targeted customer segments and characteristics of future product portfolio are critical assets for all biotech companies. An obligation to publicly disclose this in an information notice will compromise the value and future potential of the company which is the fundamental reason the VCs are investing in it in the first place.

3 BCIQ, based on MS Ventures data, as of September 2014
Ex-post review possibility

The risk of the authorities commencing investigations up to 6 months after the information notice will create delays in the availability of funding since the VC syndicate will be reluctant to advance money until any investigation is concluded, seriously jeopardise the likelihood of financings occurring at all, which could have negative consequences on the biotech companies (risk of bankruptcy), and may also block corporate VCs such as SR One out of syndicates. Given how many early stage biotech companies now rely on corporate VC as part of their funding strategy (see above) this would not only have serious consequences for the corporate VC funds themselves, potentially resulting in them putting less money into European biotechs and more money into companies in geographies that do not have such rules, but also significantly reduce the sources of capital available to early stage companies and thus hinder the growth of innovation in the biotech sector in Europe.

3. Our recommendations

President-elect Jean-Claude Juncker has confirmed that his number one priority is to get a “new boost for jobs, growth and investment”. He spells out that “Jobs, growth and investment will only return to Europe if we create the right regulatory environment and promote a climate of entrepreneurship and job creation. We must not stifle innovation and competitiveness with too prescriptive and too detailed regulations, notably when it comes to small and medium sized enterprises (SMEs).”

In that spirit, we call on the Commission to ensure that the minority shareholdings acquired by VCs, including corporate VCs are not included in any legislative changes. This could be achieved by excluding investments made in start-up, developing and small companies that have no marketed products or turnover and are therefore critically in need of venture capital funds for their continued growth and development.

4 http://ec.europa.eu/about/juncker-commission/priorities/01/index_en.htm