EN

Case No COMP/M.5863 -
MERCK/ MILLIPORE

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 07/07/2010

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party :

Dear Sir/Madam,

Subject: **No COMP/M.5863 – Merck/ Millipore**
Notification of 02.06.2010 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 2 June 2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation No 139/2004 ("the Merger Regulation") by which Merck KGaA ("Merck", Germany) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the undertaking Millipore Corporation ("Millipore", USA)[2] by way of purchase of shares.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the internal market and the EEA Agreement.

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1 OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

2 Both referred to as the "Parties".

I. THE PARTIES AND THE OPERATION

3. Merck is a pharmaceutical and chemical company. The Merck Serono division, which is part of Merck's pharmaceutical business, is active in the discovery, development and manufacturing of chemical and biological molecules in such areas as neurodegenerative diseases, oncology, fertility, as well as a broad portfolio of classic products, in particular for cardiovascular diseases and metabolic disorders. Merck's Laboratory Division, a part of its chemical business, offers products and services for the analytical and preparative laboratory, and its Life Science Solutions Division offers products and services for production processes in the pharmaceutical, chemical and food industries.

4. Millipore is a global group of companies engaged in the development, production and sale of life science tools and services. Its *Bioscience Division* specialises in products, technologies and services designed to improve laboratory productivity and work flows for life science research. The product offering includes laboratory water solutions, reagents, kits, antibodies, tools for purifying, preparing or screening biological samples, and complementary accessories. Its *Bioprocess Division* provides products and services to help pharmaceutical and biotech companies to develop and optimise manufacturing processes and ensure drug quality and safety. The main products include cell culture media supplements, filtration consumables and devices, certain chromatography media, process monitoring tools and complementary instruments.

5. Merck intends to acquire 100% of the issued and outstanding voting securities of and thereby sole control over the whole of Millipore. The transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

II. EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Merck: EUR 7.747 billion; Millipore: EUR 1.188 billion in 2009), the EU-wide turnover of each undertaking concerned is more than EUR 250 million (Merck: EUR […] billion; Millipore: EUR […] million in 2009) and the Parties do not achieve more than two-thirds of their EU-wide turnover within one and the same Member State. The concentration therefore has an EU-dimension pursuant to Art. 1(2) of the Merger Regulation.

III. COMPETITIVE ASSESSMENT

A. Relevant product markets

7. The Parties are both active in the life science business. However, according to the Parties, Millipore's activities are focused primarily on biologics, i.e. it supplies inputs for the research, development and production of biological drugs created through biological processes (as opposed to chemical processes). Biological drugs are biologically derived from living cells. By contrast, Merck offers inputs mainly for the research, development and production of products created through chemical processes. Its activities relating to biologics are limited. Therefore, the transaction is largely complementary according to the Parties.

8. The Parties have identified two horizontal overlaps between Merck's and Millipore's activities which lead to affected markets: (i) the market for the supply of so-called Luminex immunoassays and (ii) the market for the supply of air monitoring devices.

(i) Luminex immunoassays

9. Immunoassays are used in the proteomics (or also protein) research which deals with the study of the structure and the function of proteins. Its goal is to identify, quantify, and classify the function of proteins produced by given genomes. Both Millipore and Merck are active in supplies for proteomics research.

10. Researchers require a number of products in order to conduct proteomics research. These products can be functionally divided into the following segments: (i) protein expression, which includes reagents, assays and kits for inducing the production of proteins of interest and the subsequent purification of targeted proteins; (ii) reagents/assays/kits used to analyse proteins.

11. Immunoassays are a particular type of assays used in protein analysis. They are used to identify and quantify the proteins present in a specimen. The underlying technique uses the reaction/binding between an antigen and its homologous antibody, in order to identify and quantify the specific antigen or antibody in a sample.

12. Within immunoassays, there are different techniques/technologies which can be distinguished. One of these technologies is Luminex which was developed by the Luminex Corporation. Luminex Corporation licenses its proprietary technology and supplies the related microspheres and laboratory instrumentation to licensees that develop bioassays and associated products, amongst others Merck and Millipore.

13. The Luminex technology has the particular feature that it allows the researcher to analyse a large number of biological analytes at the same time. The Parties therefore bring forward that this technology may not be substitutable with other protein analysis techniques. The market investigation which the Commission has carried out has largely confirmed this segmentation. However, for the purposes of this decision, the exact product market definition can be left open, since the concentration does not raises competition concerns with regard to Luminex immunoassays even assuming that they form part of a larger market with other protein analysis techniques as such a broader market would not be affected.

(ii) Air monitoring systems

14. Air monitoring devices are used by pharmaceutical and biopharmaceutical companies which face strict safety requirements throughout the whole drug manufacturing process. Drugs must be produced in sterile environments with no tolerance for the presence of bacteria. Air monitoring instruments are used to measure the level of microbial presence in clean rooms and sterile environments, especially in hygienically critical areas.

15. Air monitoring systems consist of an air monitoring device which is used in combination with a culture medium, i.e. a liquid or gel designed to support the growth of micro-organisms/bacteria. The air is aspirated through a perforated lid, and impacted onto the surface of growth media. The media are taken out and the micro-

organisms which the air left on the media are further cultivated. After proper cultivation, potential bacteria colonies can be detected.

16. Whereas some of the systems are "open" in the sense that the device can be used with media from other suppliers (notably Merck's instrument), others are "closed" in the sense that device can only be used with media from the supplier of the instrument (notably in the case of Millipore' instrument).

17. According to the Parties, air monitoring devices may vary in design, but are not specific to an industry/customer segment. In contrast, air monitoring media are specific to the various industries because of the different detection contaminants (for example microbes in pharma/biopharma, salmonella/listeria in food and beverages, germs in clinical) and different regulatory requirements/processes entailed in each relevant manufacturing process. The market investigation broadly confirmed this segmentation for air monitoring media according to industries. However, it can be left open for the purpose of the present decision whether the market for air monitoring media should be further subdivided according to the industry as the proposed transaction raises no competitive concerns in this area irrespective of the precise market delination.

B. Relevant geographical market

18. The Parties submit that the relevant markets are EEA-wide in scope. According to the Parties, all their main competitors sell their bioscience/process on an EEA-wide (and even global) basis. Generally, all suppliers use a mix of direct sales to customers (including through the internet) and independent distributors. Over [90-100]% of Millipore's sales in the EEA across its product portfolio are made direct.

19. According to the Parties, also all products from all competitors are shipped from a limited number of warehouses throughout the EEA. They submit that the transportation costs in particular for Luminex assays and air monitoring devices are minor in relation to their final price. According to the Parties, there are neither regulatory barriers which would prevent the sale of a product throughout the EEA nor intellectual property rights which would hamper trade between Member States. Furthermore, the Parties, as well as their main competitors, sell their products under the same brand names throughout the EEA. Finally, according to the Parties, an increasing number of the sophisticated customer base negotiates supply contracts for their operations EEA-wide.

20. The market investigation has largely confirmed the EEA-wide scope for the Luminex and the air monitoring systems markets. Competitors in both segments use a mix of direct sales through the internet and their own distributors as well as indirect sales through independent distributors. While some customers in both segments source from distributors in their country and some have stated that there are price differences between Member States, a majority has stated that there are no significant price differences across Member States. Moreover, all customers have confirmed that all the different significant competitors are present in all Member States for both segments. Therefore, similar competitive constraints apply in all Member States both with regard to Luminex immunoassays and air monitoring systems. For the purposes of this decision, the markets affected thus are considered to be EEA-wide.

C. Competitive assessment

21. According to the Parties, the only affected markets by the concentration are the markets for Luminex immunoassays and the market for the supply of air monitoring systems.

(i) Luminex immunoassays

22. On an EEA-wide market for Luminex immunoassays, the merged entity would have achieved a combined market share of [20-30]% in 2009. The increment by Merck is only [0-5]%. The combined entity will face competition in particular by the market leader Bio Rad ([30-40]%) and by Invitrogen ([10-20]%). The competitors also work on the basis of a Luminex license.

	Sales in million Euro in the EEA in 2009	**Market share in % in the EEA in 2009**
Bio Rad	[…]	[30-40]
Millipore	[…]	[20-30]
Merck	[…]	[0-5]
Combined	**[…]**	**[20-30]**
Invitrogen	[…]	[10-20]
R&D Systems	[…]	[5-10]
Others (including Cayman Chemical, Marligen and Affymetrix (Panomics))	[…]	[20-30]

Source: Best estimates of the Parties

23. The market investigation confirmed largely the ranking of players. Respondents did not raise any competition concerns on the markets for the supply of Luminex immunoassays. The increment is minor. Indeed, the broad majority of respondents stated that there is still a sufficient number of Luminex licensees in the market post-merger. It was also mentioned that there are alternative technologies to Luminex who are not fully substitutable, but might be used on a case by case basis as an alternative for some analyses. Therefore, the concentration does not raise any competition concerns with regard to Luminex immunoassays.

(ii) Air monitoring systems

24. On an EEA-wide market for air monitoring *devices*, the merged entity would have achieved a combined market share of [20-30]% in 2009. The increment by Millipore is [0-5]%. The combined entity will face competition in particular by the market leader Biotest ([20-30]%) as well as by other credible players.

	Sales in million Euro in the EEA 2009	**Market share in % in the EEA in 2009**
Biotest	[…]	[20-30]
Merck	[…]	[10-20]
Millipore	[…]	[0-5]
Combined	**[…]**	**[20-30]**
bioMérieux	[…]	[10-20]
OXOID	[…]	[10-20]
PBI	[…]	[5-10]
AES	[…]	[5-10]
Others	[…]	[10-20]

Source: Best estimates of the Parties

25. On an EEA-wide market for *air monitoring media* both parties do not compete which each other as Millipore's air monitoring systems only work with Millipore's media and Millipore's media would not work on any other air monitoring system (closed system).

26. To account for the fact that Millipore sells a closed system, the Parties have also provided for figures regarding an EEA-wide market which would include both the devices and consumables/media which represent an estimate of the sales of consumable/media sold during the average life cycle of the devices. On such market including consumables/media for all customer segments, the Parties combined market share is only [10-20]% for 2009, with Biotest ([20-30]%) leading the market.

27. If one were to segment this market according to the different consumables/media for different customer groups (pharma, food and beverage, chemical industry, clinical testing, academia), the Parties combined market share would remain below [10-20]% in all segments, and the merged entity would face competition by all the above-mentioned competitors.

28. Within the market investigation, respondents have stated that, post-merger, there will be sufficient competitors on the market for both the devices and the media/consumables. Therefore, the concentration does not raise any competition concerns with regard to air monitoring systems.

Conclusion

29. In light of the above, the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market.

IV. CONCLUSION

30. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission,
(*signed)*
Andris PIEBALGS
Member of the European Commission