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# *Case No COMP/M.4569 - GE / ABBOTT DIAGNOSTICS DIVISION*

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## REGULATION (EC) No 139/2004
## MERGER PROCEDURE

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Article 6(1)(b) NON-OPPOSITION
Date: 24/04/2007

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

**To the notifying party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.4569 – GE / Abbott Diagnostics**
**Notification of 15.03.2007 pursuant to Article 4 of Council Regulation No 139/2004[1]**

1. On 15.03.2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which the undertaking General Electric ("GE", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control over Abbott Laboratories' ("Abbott", USA) laboratory *in vitro* diagnostics business and point-of-care *in vitro* diagnostics business ("Abbott Diagnostics") by way of purchase of assets.

2. 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 common market and with the EEA Agreement.

## I. THE PARTIES

3. GE is a diversified industrial corporation which is active in numerous fields, including manufacturing, technology and services. GE is active in health-related products through its division GE Healthcare ("GEHC"). Other GE businesses are GE Infrastructure

[1] OJ L 24, 29.1.2004, p. 1.

(aviation, energy etc.), GE Industrial (appliances, lighting etc.) GE Commercial Finance (insurance, loans, etc.), GE Money (credit services) and NBC Universal (media).

4. Abbott Diagnostics develops, manufactures and sells *in vitro* diagnostic ("IVD") systems and products for use in hospitals, medical laboratories and physicians' offices including portable and handheld IVD products for blood analysis at the point of patient care.

## II. THE OPERATION

5. On 18 January 2007, GE and Abbott concluded an asset purchase agreement under the terms of which GE will acquire sole control of substantially all the assets and liabilities of Abbott Diagnostics. The transaction will be carried out by way of an acquisition of the relevant global assets by legal entities owned by GE, either existing or to be set up.

## III. CONCENTRATION

6. Following the transaction, GE will acquire sole control over Abbott Diagnostics. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than € 5 billion (GE: € 130 billion in 2006; Abbott Diagnostics: […]). Each of them has a Community-wide turnover in excess of € 250 million (GE: […]; Abbott Diagnostics: […]) but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## V. COMPETITIVE ASSESSMENT

8. The proposed transaction concerns the manufacture and sale of IVD reagents, instruments and accessory products, collectively referred to as "IVD systems"[2]. In contrast to Abbott Diagnostics, GE is not active in the manufacture and sale of IVD systems. As a result, the proposed transaction does not lead to any horizontal overlap. However, GE supplies life sciences products to the IVD sector where Abbott Diagnostics is active. Therefore the merger gives rise to vertical relationships. In addition, GE offers *in vivo*[3] products such as diagnostic imaging equipment and diagnostic pharmaceuticals, and possible conglomerate effects are thus examined.

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[2] Reagents (or "tests") are solutions of highly specific biological or chemical substances that are able to react with target substances in samples (for example blood, tissue or urine) to produce a product that can be measured or seen. The analytical instruments (or "equipment") bring samples and reagents together and measure the result. Accessory products (or "accessories") such as software programmes are used to run the instrumentation, control reagents and calibrators and ensure the smooth functioning of the entire system.

[3] Abbott Diagnostics' *in vitro* diagnostic testing involves tests for disease outside the body using blood and urine samples. By contrast, GE's diagnostic pharmaceuticals are injected into the body and then its diagnostic imaging systems are used to capture the image of the interaction of the injected substances and the body (*in vivo*).

## Vertical Relationships

### *Upstream markets*

9. GE sales of life sciences products to the IVD industry comprise chromatography equipment and media, bulk nucleotides and oligonucleotide synthesis chemistry and hardware.

*Relevant product markets*

10. *Chromatography* is used to separate and purify proteins according to, *inter alia*, their physical properties such as size, electrical charge, biological function etc. Two broad technologies of chromatography exist, gas and liquid. GE is only active in liquid chromatography..

11. In the IVD sector, liquid chromatography[4] is one of a number of processes that are used in the development and manufacture of IVD reagents. More particularly, it is used to purify biomolecules[5] that are subsequently used in the production of two of the basic components of an IVD reagent kit: (i) a coated solid phase that provide binding surfaces for reagents and (ii) a conjugate, which detects molecules to identify and then signal the presence or absence of disease. IVD manufacturers predominantly use liquid chromatography techniques because of the soluble water-based nature of IVD reagents. However, it should also be noted that not all biomolecules used in IVD reagents require the use of chromatography processes to achieve the desired level of purity for the IVD reagent[6].

12. Liquid chromatography encompasses a number of different techniques such as affinity chromatography, gel filtration, ion exchange chromatography and hydrophobic interaction chromatography. The degree of substitutability among the different techniques appears limited. From a demand-side consideration, the notifying party submits that in the early development phase of an IVD test, researchers will experiment with different techniques before the optimum technique or techniques is/are identified for the product and hence they will often purchases different sets and combinations of various techniques. However, changes between techniques are not common once a product reaches the manufacturing stage as explained below as the most efficient technique is selected from an economic and technical point of view. On the other hand, the market investigation indicated that, from a supply-side perspective, most liquid chromatography suppliers are active in more than one technique but with various degree of success: the fact that GE's market position varies a great deal from one liquid chromatography technique to another (see below in the competitive assessment)

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4 Gas chromatography is not used in the IVD sector.

5 A biomolecule is predominantly a protein (i.e., antigens and antibodies)

6 For example, some biomolecules can be purified by other methods such as differential solubilisation - a process in which different solvents are used to dissolve and isolate materials based on their solubilities in these solvents.

suggests that the supply-side substitutability could be limited. However it is not necessary to decide whether each liquid chromatography technique constitutes a relevant product market or whether the relevant market should encompass all liquid chromatography techniques as the proposed transaction does not raise competition concerns under any product market definition.

13. *Bulk nucleotides* are the building blocks of DNA[7] and are used in a number of different laboratory techniques. GE does not itself manufacture bulk nucleotides but purchases them from a third party supplier for resale to customers for applications including oligonucleotide synthesis (see below), polymerase chain reaction[8] ("PCR") and DNA sequencing[9].

14. *Oligonucleotides*[10] are short sequences of nucleotides, typically with 20 or fewer bases i.e. units of DNA. Oligonucleotide synthesizers are fluid-handling devices that are used to simplify the chemical process of replicating oligonucleotides and multiplying bases. In the IVD sector, sales of bulk nucleotides, oligonucleotides and oligonucleotide synthesizers take place only occasionally for general research and development applications. For the purposes of the present investigation, it is however not necessary to determine the precise scope of these product markets as no competition concerns would arise under any alternative definition.

*Relevant geographic markets*

15. The supply of chromatography equipment and media, bulk nucleotides and oligonucleotide synthesis chemistry and hardware, to the pharmaceutical and biotechnology industries, academia and the IVD sector is conducted on a global basis. Suppliers are generally active globally with centralised production facilities. GE and its rivals offer their products globally under similar brand names and with similar packaging. Moreover, transport costs are not significant, generally accounting for a very low proportion of the price of these products. Furthermore, many customers are sophisticated and are themselves active in the IVD sector on a global basis. The markets for these products appear therefore to be EEA-wide and the market investigation did not bring any elements that would speak for the definition of narrower geographic markets[11]. However, in the absence of any significant vertical concerns arising from the proposed transaction, it is not necessary to define the precise scope of the relevant geographic markets.

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7 Bulk nucleotides are the constituent molecules (adenine, guanine, thymine and cystosine) used in the synthesis of DNA (Deoxyribonucleic acid).

8 PCR using nucleotides and oligonucleotides is a generic research tool employed in the amplification of DNA. PCR is a biochemistry and molecular biology technique used in the pharmaceutical, biotechnology, academic and IVD fields.

9 DNA sequencing is the process of determining the order of nucleotide bases in a DNA oligonucleotide.

10 GE manufactures and markets oligonucleotides.

11 It should however be noted that this discussion of the relevant geographic markets is specific to this case. Indeed, it cannot be excluded that the markets for liquid chromatography would have to be defined as national if the set of customers considered (e.g. laboratories) were different.

***Downstream markets – in vitro diagnostics***

16. Abbott Diagnostics is active in the manufacture and sale of IVD systems. The IVD sector has been the subject of a number of previous cases examined by the Commission[12].

17. In the most recent of these cases (M. 4321 – Siemens/Bayer Diagnostics), the Commission referred to the European Diagnostic Manufacturers Association's ("EDMA") classification of IVD reagents for the purposes of defining the relevant product market. The EDMA currently classifies IVD reagents into six main categories: (i) clinical chemistry, (ii) immunochemistry, (iii) haematology, (iv) microbiology culture, (v) infectious immunology and (vi) genetic testing. Abbott Diagnostics is active in four of the six categories: clinical chemistry[13], immunochemistry[14], haematology[15] and infectious immunology[16]. Within each of the six categories, the EDMA proposes a second level of classification based on thematic 'panels' of tests. As an example, in the infectious immunology category where Abbott Diagnostics is the market leader in the EEA, 10 so called second level classifications exist including bacteriology, hepatitis viruses, retroviruses and other virology.

18. It is to be noted that the EDMA does not make any distinction between regular instruments and point-of–care devices in its classification with both considered to form part of the broad category of IVD instruments and reagents. However, the notifying party submits in the absence of any significant competition concerns arising from the proposed concentration that the precise scope of the relevant market may be left open.

19. In previous cases concerning the IVD industry, the Commission has considered whether a further segmentation of the relevant product markets should be made between reagents and instruments[17]. However, it has normally found this further segmentation to be unnecessary in the sense that IVD instruments are often proprietary or "technically closed", i.e., the reagents of one manufacturer cannot be used with equipment of any other manufacturer and vice versa. Even those remaining "technically open" systems available in the IVD business are closed *de facto* because the reliability of test results is

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12 Case IV/M.457 Roche/Syntex: Case IV/M.950 Hoffman – La Roche/Boehringer Mannheim: Case IV/M.954 Bain/Hoechst–Dade Behring: Case IV/M.1325 Bayer/Chiron Diagnostics: Case COMP/M.4321 Siemens/Bayer Diagnostics

13 Clinical chemistry diagnostics systems operate biochemical tests that measure the presence of certain substances (e.g. enzymes, lipids, proteins, cholesterol, drugs) in body fluids.

14 Immunochemistry involves the use of targeted antibodies to identify and quantify levels of hormones, proteins, drugs and other biological substances found in relatively low concentrations in blood and urine.

15 Haematology encompasses those IVD that test the blood itself, especially its cellular elements.

16 Infectious Immunology includes test performed in connection with diseases caused by bacterial or viral infection

17 The Commission has left open the question of whether there exists a separate market for accessories such as laboratory software specially designed to provide support for the registration and evaluation of test results. See, Case IV/M.1325 Bayer/Chiron Diagnostics, paragraph 11.

often guaranteed only when using proprietary equipment and reagents. The Commission has also considered in these cases whether the second level or thematic panels of the EDMA classification or even specific IVD tests could constitute separate markets or whether some of them could be grouped together without taking a final position.

20. The market investigation in the present case demonstrated there to be a widespread acceptance amongst IVD producers of the EDMA classification as a reasonable basis on which to categorise IVD reagents. However, responses to the question whether it is appropriate to consider point-of-care tests as part of the overall IVD market gave a more mixed picture with half of the respondents indicating from a supply-side perspective that such tests require specific production knowledge that not all IVD producers possess. In addition, whilst immunochemistry and infectious immunology were viewed by most respondents to be distinct categories, there was a general acknowledgement that immunoassays and infectious immunoassays are performed on the same equipment. However, in the absence of horizontal overlaps in the present case and any specific competition concerns, it is not necessary to reach a definitive conclusion on the precise scope of the product markets.

*Relevant geographic markets*

21. The Commission has considered the relevant geographic markets in previous cases involving the IVD sector to be national[18], citing , *inter alia*, (i) the national organisation of suppliers' distribution networks, (ii) the fact that customers tend to buy their reagents and instruments in their home country due to their need for rapid and reliable service to ensure continuous availability of these products and (iii) the considerable price differences existing between Member States that reflect the divergences in national health policies, social security regulations and the technology used in laboratories. At the same time, the Commission has recognised that the relevant geographic market may be increasingly EEA-wide in scope as all major providers of IVD systems are active worldwide and supply the same equipment and reagents in identical form and with identical designs and labelling throughout the EEA. However, the notifying party submits that for the purposes of the present case it is not necessary to reach a definitive conclusion on the precise scope of the relevant geographic markets as the proposed concentration does not give rise to any competition concerns.

22. While there was an acknowledgement from some respondents that the scope of the IVD market was increasingly broader than national as the most important IVD suppliers are active on a worldwide basis and the nature of products, due to regulatory requirements[19], does not differ within the EEA, the market investigation has to a large extent reconfirmed many of the findings in previous cases concerning the IVD sector. In particular, it was found that suppliers maintain national sales forces in many markets to respond to the needs of customers in those markets. In markets where they do not have

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18 Case IV/M.457 Roche/Syntex, paragraphs 29-33; Case IV/M.950 Hoffman – La Roche/Boehringer Mannheim, paragraphs 48-56; Case IV/M.954 Bain/Hoechst – Dade Behring, paragraphs 28-31; Case IV/M.1325 Bayer/Chiron Diagnostics, paragraphs 25-26; Case COMP/M.4321 Siemens/Bayer Diagnostics, paragraphs 28-30.

19 Directive 98/79 of the European Parliament and of the Council of 27 October 1998 on *in vitro* medical devices, ("the IVD Directive"), (OJ L 331, 7.12.1998, p.1) sets out the regulatory requirements that such devices must meet before they can be put on the market in the EU, regardless of whether they are manufactured in the EU or elsewhere.

their own sales force, suppliers commonly use independent distributors to supply customers in those markets with the result that the cross-border servicing of customers or the existence of trans-national customers is rare. At the same time, a majority of respondents confirmed the continued existence of price differences between national markets reflecting *inter alia* different social security and insurance systems and thereby reimbursement levels.

23. Thus, in line with the decision M.4321 Siemens/Bayer Diagnostics, the relevant geographic markets can be considered as national. However, as the potential for foreclosure could only occur on an EEA-wide if not worldwide basis, the market investigation for the purposes of this decision was conducted on an EEA/worldwide basis.

***Competitive assessment***

24. GE is active in the supply of bulk nucleotides, oligonucleotide synthesis chemistry and hardware, and chromatography equipment and media to the IVD industry. The notifying party estimates its worldwide market share for liquid chromatography to all purchasers to be in the order of [30-40%]. It submits that it is difficult to provide precise market shares at the level of individual chromatography techniques but estimates the following ranges for those techniques where it is active: (i) [<50%] in affinity chromatography; (ii) [>50%] in gel filtration; (iii) [<50%] in ion exchange chromatography; (iv), [<40%] in hydrophobic interaction chromatography; and (v) [<10%] in reversed phase chromatography. The markets for liquid chromatography and IVD tests are therefore affected by the proposed transaction. The notifying party submits that its market share for oligonucleotide synthesis chemistry and hardware is less than [20-30%]. However, this market is also technically affected by the proposed transaction as Abbott Diagnostics has a market share in excess of 25% ([40-50%]) in the downstream market at the first level of the EDMA classification for infectious immunology[20].

25. The Commission's investigation therefore focused on whether the merged entity would have the ability and the incentive to engage in (i) input foreclosure and (ii) customer foreclosure.

***Input foreclosure***

26. With regard to liquid chromatography, the Commission's investigation focused on whether the merged entity could have the ability or incentive to engage in input foreclosure having acquired one of the main players in the IVD sector. GE's sales of liquid chromatography equipment and media to all customers in the EEA, whether or not in the IVD sector, totalled [€400-500 million] in 2006. GE does not record liquid chromatography sales in the IVD sector in the ordinary course of business as (i) liquid chromatography is widely used in the pharmaceutical and biotechnology industries and academia for non-IVD applications and (ii) many of its customers (such as […]) are diversified companies meaning that it is not possible to determine with any degree of certainty how the product is ultimately used. However, for the purposes of the present notification, the notifying party estimates its sales of liquid chromatography in the IVD sector account for only [0-5%] of its overall chromatography sales.

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20 Market share at the EEA level

27. GE submits that the liquid chromatography products sold to the IVD sector are identical to those sold to the pharmaceutical and biotechnology industries and academia. Consequently, any attempt by the merged entity to refuse to supply its IVD rivals could be countered by minimal output expansion by GE's life science rivals which are active on the market for liquid chromatography including Bio-Rad ([5-10%]), Millipore ([5-10%]), Tosoh ([0-5%]), Waters ([0-5%]), Pall ([0-5%]) and Merck ([0-5%])[21]. In this regard, GE submits that chromatography products are typically "proprietarily open" i.e. products supplied by different manufacturers are capable of being utilised together and that the technology is mature and not subject to a high degree of patent protection. It is also submitted that liquid chromatography purchases account for less than [0-5%] of the costs of producing the average IVD reagent and as such are not a significant cost factor.

28. GE's sales contracts for liquid chromatography, similar to many of its competitors, are non-exclusive. Many are one-off contracts or for short durations of a year or less. The fact that customers do not require contracts of longer duration suggests, in its opinion, that switching to other suppliers can occur with relative ease should it be necessary.

29. In terms of incentive to foreclose, GE argues that a large proportion of the IVD purchasers of the different types of liquid chromatography products (approximately [30-40%] of GE's chromatography revenues from IVD companies) are large diversified multinational companies that purchase these products for their non–IVD businesses as well. Therefore, GE would have to withhold sales or increase prices across all the purchases of customers. GE submits that this would not be a rational commercial strategy as it would stand to lose significant sales in non-IVD segments, thereby rendering the costs of a hypothetical attempt to foreclose its IVD rivals unaffordable.

30. The results of the market investigation revealed that customers purchasing liquid chromatography products from GE do so primarily because of the company's reputation and broad product offering. Although the significance of liquid chromatography in cost terms in the manufacture of IVD tests was generally estimated by respondents to be less than 10%, its importance as a key element in the overall production process was highlighted by a number of customers. Due, in large measure, to the regulatory environment surrounding the approval and marketing of IVD medical devices in the EEA, it would according to these respondents in the investigation be difficult to switch to another supplier without significant time and expense should the post-merger entity hypothetically increase prices and /or reduce supplies. At the same time, other IVD producers pointed to the existence of alternative suppliers and indicated that switching would not pose undue difficulties for them.

31. The regulatory / approval process for the sale of *in vitro* diagnostic products in the EEA is set out in Directive 98/79/EC of 27 October 1998 (the "IVD Directive"). The IVD Directive requires all IVD products (as defined therein) to carry the CE Mark before they can be placed on the market in the EEA. The CE marking symbolises the conformity of the IVD product with the applicable requirements of the IVD Directive imposed on the IVD manufacturers.

32. The majority of IVD products are low risk and therefore self-certified. For these products the conformity assessment procedures can generally be carried out under the sole responsibility of the manufacturers. Conversely, certain specific IVD products bear

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[21] GE's estimates of rivals' market share of liquid chromatography sales to all purchasers.

a greater risk because their performance is essential to medical practice and their failure can cause a serious risk to health[22]. These products are subject to a higher level of review and assessment requiring the intervention of an independent third-party reviewing entity, known as a "Notifying Body".

33. As described above, different regulatory requirements apply to different IVD products depending on the risk category into which a product falls. Because of the sensitivity of IVD test results and the therapeutic measures adopted on their basis, the IVD regulatory approval not only assesses the conformity of the final product (i.e., the design) but, for certain products, also their manufacturing process (i.e., the quality system).

34. As a change in the manufacturing process might also affect the specifications (i.e., the design) of the end product, an IVD manufacturer would also have to revalidate internally the effects of any change in the manufacturing process caused by the change to a new chromatography technique/supplier. Depending on this internal assessment the IVD manufacturer might then have to make a new EC Declaration of Conformity or re-apply for design approval as the case may be.

35. The notifying party estimates that switching from one chromatography technique / supplier to another for the purposes of manufacturing a hepatitis or a retrovirus assay, which are Annex II, List A products and therefore subject to the strictest requirements, could be accomplished at a cost of less than [€100,000-300,000] within approximately 12 months. Although one respondent in the market investigation who commented on the switching issue indicated that it would be more costly and take longer than 12 months, the majority did not consider switching costs a significant issue.

36. The fact that GE's sales of liquid chromatography to IVD customers are a small percentage of its overall chromatography sales, and by extension an even smaller percentage of its total healthcare sales, does not totally exclude that the merged entity could have the ability or incentive to foreclose its competitors in the IVD industry. In this regard, while liquid chromatography is a relatively unimportant input in cost terms in the manufacture of IVD products, its significance may be amplified by switching costs and the validation and approval process required by the IVD Directive. On the other hand, such a foreclosing strategy would, in any event, be confined to those IVD competitors who are not significant purchasers of liquid chromatography products for a range of non-IVD purposes[23].

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22 The IVD Directive distinguishes between four classes of IVD products based on the level of risk:

(i) Annex II, List A - high risk (this includes reagents for determining the blood groups ABO systems, rhesus, anti-Kell, and for the detection of HIV, HTLV I and II, and Hepatitis B, C and D viruses);

(ii) Annex II, List B - high to medium risk (this includes reagents for determining the blood groups anti-Duff and anti-Kidd, and for determining infectious and diseases such as rubella, and toxoplasmosis);

(iii) Self Test - medium risk (this includes self-testing devices except those for blood glucose measurement);

(iv) General Category - low risk (this includes all other IVD reagents).

23 It could also be argued that even for these competitors, a foreclosing strategy based on price discrimination between IVD mono-producer customers and multi-application customers could be defeated by subsequent arbitrage.

37. Furthermore, it should be recalled that a number of IVD producers indicated that if the need arose to find an alternative supplier this is possible. The market investigation demonstrated there to be a number of credible, alternative suppliers of liquid chromatography products active on the market. Although not all suppliers offer an equivalent range of chromatography techniques to that offered by GE, respondents in the market investigation did not indicate that the supply of all techniques is a vital aspect to IVD customers. The alternative suppliers are not constrained in terms of capacity and would be able to respond to a surge in demand if required.

38. In conclusion, any hypothetical attempt by the merged entity to foreclose its IVD rivals by increasing the price and/or reducing the supply of liquid chromatography products would not result in input foreclosure for the reasons outlined above. Consequently, the proposed transaction is not expected to result in any significant impediment to effective competition in the market for IVD systems.

***Customer foreclosure***

39. According to the notifying party, customer foreclosure with respect to liquid chromatography can be ruled out on the grounds that, even within each technique in which GE is active, Abbott Diagnostics' total chromatography purchases represent an insignificant proportion of total sales of that technique. As such, any effect on GE's rivals' shares of a hypothetical switch of Abbott Diagnostics' chromatography purchases to GE would be minimal and they would continue to have more than sufficient alternative outlets for their products to remain competitive. This was confirmed by respondents in the market investigation.

***Bulk nucleotides and oligonucleotide synthesis***

40. With regard to bulk nucleotides, it is recalled that GE does not manufacture these itself but purchases them from a third party for resale. In addition, Abbott Diagnostics had no or *de minimis* purchases of these products from either GE or its rivals. The same is true for oligonucleotide chemistry synthesis and hardware. Therefore, the proposed concentration does not give rise to foreclosure concerns from either an input or customer perspective.

***Conglomerate issues***

41. Although the proposed transaction does not give rise to horizontal overlaps, both Abbott Diagnostics and GE are active in the medical diagnostics business: Abbott Diagnostics through *in vitro* diagnostics and GE through *in-vivo*[24] diagnostic products such as diagnostic imaging (DI) equipment and related services as well as diagnostic pharmaceuticals (DP)[25]. As can be seen from the decision M.3304 – GE/Amersham

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[24] In contrast to *in vitro* diagnostics which occur outside the body (literally 'in glass'), *in vivo* diagnostics take place in the body. GE's diagnostics pharmaceuticals are injected into the body and then its diagnostic imaging systems are used to capture the "image" of the interaction of the injected substances and the body. The DI products are Computed Tomography imaging equipment, Magnetic Resonance imaging equipment, Ultrasound Imaging equipment, and Nuclear Imaging equipment (Positron Emission Tomography (PET) and SPECT Gamma cameras).

[25] GE also manufactures and supplies patient monitoring solutions, anaesthesia delivery systems, healthcare information technology and life science products.

(which is confirmed by GE's submission in this case), GE makes significant sales of some of these products in a number of member states.[26]

42. However, the proposed transaction is not likely to give rise to conglomerate effects through commercial bundling[27]. As submitted by the notifying party and confirmed by the market investigation, there are indeed numerous obstacles to bundling the products in questions such as the fact that, with the exception of hospitals, the products are typically purchased by different customers.

43. In the specific case of hospitals, some respondents indicated that although users of the products are different (i.e. different hospital departments), the customer is the same (i.e. the hospital to which the departments belong) thereby suggesting that a bundling strategy could be possible. However, the market investigation also indicated that within the hospital sector, distinct tenders are organised for the procurement of *in vitro* diagnostic products and GE's existing healthcare products. Procurement cycles, processes and budgets also differ for *in vitro* and *in vivo* products. Furthermore, as noted by the Commission in GE/Amersham, while hospitals can value in the short term lower prices achieved through bundling, price is not necessarily their key selection criterion and technology plays a great role in their purchasing process. As a result, hospitals can be expected to continue to purchase the products best fitted to their demand and refuse the incentives resulting from bundled offers if the latter could result in a decrease of quality.

44. As a result, the prospect of the merged entity being able to engage in a successful bundling strategy appears limited in the short term. For these reasons, it is concluded that the proposed transaction is unlikely to give rise to anticompetitive conglomerate concerns.

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[26] However, the notifying party considers that GE lacks market power in any in vivo diagnostics (and patient monitors products).

[27] No risk of technical tying was brought to the attention of the Commission in the course of the market investigation.

## VI. CONCLUSION

45. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission