

***Case No COMP/M.4007 -
RECKITT BENCKISER /
BOOTS HEALTHCARE
INTERNATIONAL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/01/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.01.2006

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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: Case No COMP/M.4007 - Reckitt Benckiser/Boots Healthcare International
Notification of 25.11.2005 pursuant to Article 4 of Council Regulation No 139/2004¹**

1. On 25.11.2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Reckitt Benckiser plc ("Reckitt Benckiser", United Kingdom) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Boots Healthcare International ("BHI", United Kingdom) which is currently part of Boots Group PLC by way of a mixed share and asset acquisition.

I. THE PARTIES

2. Reckitt Benckiser is a group active worldwide in the manufacture and sale of household products (fabric care, surface care, dishwashing and home care products) as well as health and personal care products and food products. Its most well-known brands in the health and personal care sector include *Lemsip* (cold and flu remedies), *Dettol* (disinfectant), *Gaviscon* (indigestion treatment) and *Veet* (depilatories).

¹ OJ L 24, 29.1.2004 p. 1.

3. BHI is a consumer healthcare business largely manufacturing and selling over-the-counter (“OTC”) products on a worldwide basis. BHI’s most successful brands are *Nurofen* (analgesics), *Strepsils* (medicated throat confectionary) and *Clearasil* (anti-acne treatment).

II. THE OPERATION AND THE CONCENTRATION

4. On 07.10.2005, Reckitt Benckiser entered into a Business and Share Sale and Purchase Agreement with Boots Group PLC whereby Reckitt Benckiser intends to acquire sole control of BHI, the worldwide Boots consumer healthcare business, which includes five manufacturing facilities.
5. The proposed concentration is a pre-condition to another transaction involving the parent company of BHI, Boots Groups PLC which is intending to acquire sole control over Alliance UniChem, a pharmaceutical wholesaler. This case was subject to a request by Boots Group PLC for a referral before notification and to a favourable decision of the Commission to refer the assessment of the case in its entirety to the UK competition authority on the 30.11.2005.
6. The notified operation is intended to confer to Reckitt Benckiser sole control over BHI. It would therefore constitute a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (Reckitt Benckiser: EUR 5.704 billion, BHI: EUR [...] million). Each of them has a Community-wide turnover in excess of EUR 250 million (Reckitt Benckiser: EUR [...] billion, BHI: EUR [...] million), 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.

IV. COMPETITIVE ASSESSMENT

8. The concentration refers almost exclusively to OTC products, where both parties are active and gives rise to nine horizontal affected markets in OTC products and one vertical affected market in the contract manufacturing of pharmaceuticals.

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

A. Horizontal aspects

1. Relevant product markets

9. In previous decisions³, the Commission has applied the Anatomical Therapeutic Chemical (ATC) classification devised by the European Pharmaceutical Marketing Research Association (EphMRA) and has stated that the third level of the ATC classification allows medicines to be grouped in terms of their therapeutic indications and can therefore be used as an operational starting point for market definition. However, in certain cases it may be necessary to analyse pharmaceutical products at a higher, lower or mixed level or to further subdivide the ATC 3 classes on the basis of demand-related criteria.
10. The Commission has in the past defined separate markets for OTC (as opposed to prescription) pharmaceuticals because medical indications (as well as side effects), legal framework, marketing and distributing tend to differ between these categories. The parties have followed this subdivision between OTC and prescribed medicines and provided data on the OTC market, as none of the parties is active on prescribed medicines. Therefore, and as the market investigation confirmed this view, the Commission will assess OTC medicines as separate product markets.
11. The concentration will give rise to 9 horizontally affected markets in the area of OTC products. These 9 affected markets relate to five ATC 3 classes (N2B, R2A, D8A, R5A and A6A) and to one market that the parties have defined as “intimate hygiene” products. Among the five ATC 3 classes, the parties suggest that for D8A (antiseptics and disinfectants) and R5A (cold preparations without anti-infectives), the product market definition should not strictly follow the ATC 3 category and propose an alternative definition that is discussed in detail below.
12. In line with the approach taken by the Commission in past decisions, the parties submit that the ATC 3 classes N2B (non narcotics and pyretics)⁴, R2A (throat preparations)⁵ and A6A (laxatives)⁶ are relevant for the purpose of the market definition. The market investigation did not bring up alternative market definitions. Therefore these markets will be defined on the basis of the ATC 3 classes for the purposes of this case.

D8A (antiseptics and disinfectants)

³ See for instance Commission’s decision in the cases *COMP/M. 3354 Sanofi-Synthelabo/Aventis*, *COMP/M. 3544 Bayer Healthcare/Roche (OTC business)*

⁴ See Commission’s decision in the case *COMP/M. 3354 Sanofi-Synthelabo/Aventis*.

⁵ See Commission’s decision in the case *COMP/M. 3354 Sanofi-Synthelabo/Aventis*.

⁶ See Commission’s decision in the case *COMP/M.3853 Solvay/Fournier*.

13. According to the EphMRA 2005 guidelines, the D8A group, named “antiseptics and disinfectants”, includes all dermatological antiseptic preparations for human use which are not classified otherwise⁷.
14. In previous decisions the Commission has considered that the D8A group was the relevant product market definition⁸.
15. Nevertheless, the parties consider that the D8A class does not reflect the complete competitive environment in the Netherlands (as it is mentioned below, OTC markets are national in scope) and that Reckitt Benckiser’s brand *Dettol* and BHI’s brand *Sterilon* do not belong to the same product market whereas *Betadine*, a product marketed by Viatrix is the closest substitute to *Sterilon*.
16. On the basis of the documents provided by the parties and its market investigation, the Commission found that the following reasons expressed by the parties are pertinent.
17. Firstly, *Dettol* is primarily a household floor and surface disinfectant rather than a skin antiseptic. *Dettol* can be used as both a household and skin disinfectant. *Sterilon*, like *Betadine*, is a skin antiseptic only.
18. Secondly, as *Dettol* is primarily a household disinfectant, it is necessary to dilute it with water before use, whilst *Sterilon* and *Betadine* are for direct application.
19. Thirdly, *Dettol* is sold in liquid format only, in bottles of 100ml, 500ml, 1 litre and 5 litres. Conversely, *Sterilon* similar to *Betadine* is sold in smaller formats, including spray, cream and liquid formats⁹.
20. Fourthly, based on average retail prices collated by IMS, the price of *Sterilon* is almost four times that of *Dettol*. By comparison, the price of *Betadine* is similar to that of *Sterilon*¹⁰. This price differential is even greater when the fact that *Dettol* is usually diluted, whilst *Sterilon* and *Betadine* are for direct application, is taken into account.

⁷ The EphMRA 2005 guidelines mention that the dermatological antiseptic preparations for human use which belong to the following groups do not fall within the D8A group: D3A (wound healing agents), D6A (topical antibiotics and/or sulphonamides), D6D (topical viral infection products), D7B (combinations of corticosteroids with antibacterials), D10A (Anti-acne preparations), P3 (ectoparasiticides).

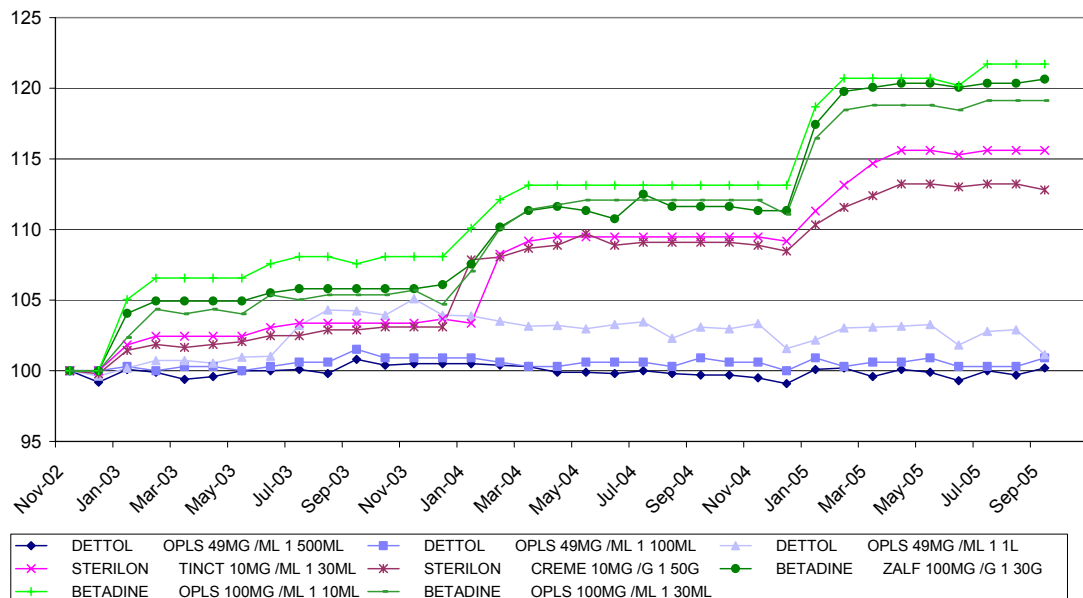
⁸ See Commission’s decision in the cases *COMP/ M.1378 - Hoechst/Rhône-Poulenc* and *COMP/ M. 3354 – Sanofi-Synthelabo/Aventis*.

⁹ In 2004, 80% of sales of *Sterilon* were achieved under liquid formats, in bottles of 10 ml (15% of sales), 15 ml (28%) and 30 ml (37%).

¹⁰ Based on average retail prices in drugstores in October 2005. The price of *Sterilon* is almost four times that of *Dettol* on a per ml basis (*Sterilon* 30ml liquid € [...], *Dettol* 100ml liquid € [...]). *Betadine* was priced at € [...] for a 30ml liquid in October 2005.

21. Fifthly, the parties provided a survey carried out in the Netherlands by RBB Economics¹¹ which finds that the correlation of *Sterilon* and *Betadine* prices is very high. Conversely, as shown in the graph below, the survey finds no correlation of *Dettol* and *Sterilon* prices, as well as *Dettol* and *Betadine* prices, which can indicate that *Dettol* is unlikely a close substitute to either *Sterilon* or *Betadine*. Indeed, if two or more products are part of the same relevant market then one might expect to see their prices moving together over time. This is because no supplier would be in a position to allow the price differential between its product and the other products in the market to widen. If it did so, and the products were genuinely part of the same market (and close competitors), it would see significant reductions in the sales of its product.

Indexed Prices of Skin Disinfection Products sold in Drugstores



22. Sixthly, the market investigation confirmed that *Sterilon* and *Dettol* are not the closest substitutes. Indeed, none of the respondents mentioned *Dettol* as the first substitute of *Sterilon*, whereas *Betadine* was mentioned several times as the first substitute of *Sterilon*.

23. However, for the purposes of the analysis of the present transaction, the question whether *Dettol* and *Sterilon* belong to the same market may be left open since this would not alter the conclusions of the competitive assessment.

24. The parties also believe that consumers in this country view a product known as “*Calendulan*”, which is owned by VMS, as a substitute for products falling within the D8A class. Although *Calendulan* is classified under wound healing products by IMS¹², the parties stress that AC Nielsen¹³ includes *Calendulan* in its antiseptics

¹¹ RBB Economics is an external provider of economic advice. The mentioned survey was carried out on the basis of monthly retail sales prices from November 2002 to October 2005.

¹² IMS: Intercontinental Medical Statistics (IMS) Health is a global independent third party provider of market information on the pharmaceutical and healthcare sector.

category. The parties also indicate that there are other wound healing products available in the Netherlands¹⁴, and that they consider that all of these products also compete with D8A products in the Netherlands. Moreover, documents provided by the parties suggest that *Calendulan* is a medicine mainly used for disinfection of light wounds such as cuts and grazes, skin irritations and skin burns, which could indicate that *Calendulan* is at the border of D8A and D3A classes.

25. In the course of the market investigation, the majority of the respondents considered that *Calendulan* does not fall within the D8A class. In particular it was stressed that *Calendulan* is mainly a wound healing product and that therefore it belongs to the D3A group (wound healing agents). However, a few respondents agreed with the parties' view.
26. However in this case, the question whether some D3A products such as *Calendulan* belong to the same market as D8A products in the Netherlands can be left open given that, on the basis of the alternative product market definitions considered, the concentration does not give rise to competition concerns.

R5A (cold preparations without anti-infectives)

27. The ATC 3 class R5A consists of "all products indicated for colds and influenza without infectives" and includes combination products containing antihistamines with decongestants, analgesics, antipyretics vitamins, antitussives and expectorants. This market definition was previously accepted by the Commission in the case *COMP M.3354 Sanofi-Synthelabo/Aventis*.
28. However the parties consider that the R5A class (cold preparations without anti-infectives) does not properly reflect the market for "cold and flu" products. The parties submit that the relevant product market should be wider than the ATC 3 R5A category, and notably include products classified under ATC class R4A (chest rubs and other inhalants), R1B (systemic nasal preparations), R1A7 (nasal decongestants) and R1A9 (other topical nasal decongestants). The parties explain that cold and flu sufferers will, depending on their particular needs and preferences, consider a wide range of different products not all contained in the R5A classification and that the parties themselves also assess the performance of their products within a wider range.
29. The parties' approach has been confirmed by a large majority of the respondents to the market investigation. However the question of the exact definition of the market can be left open as the notified transaction would not raise serious doubts on any possible market definition.

Intimate hygiene products

30. The parties submit that the intimate hygiene products market consists of personal care products that are used to wash and clean intimate areas of the female body. Since these products have no medicinal properties and are licensed as cosmetics, they are

¹³ AC Nielsen is a market information provider and a subsidiary of VNU, a global information and media company.

¹⁴ The parties mentioned, inter alia, a product called Calendula, produced by Vogel, and a calendulan product produced by Weleda.

not covered by the ATC 3 classification. The market investigation has confirmed that this product market definition is correct and did not provide evidence that the market should be further segmented, for example between daily use products and products that can only be used less frequently. The relevant product market, therefore, is considered for the purpose of this case, to be the intimate hygiene products.

2. Relevant geographic markets

31. In previous decisions the Commission held that the relevant geographic market for pharmaceutical products including OTC products was national. The parties share this view which has been by and large confirmed by the market investigation.
32. The parties submit that the national geographic dimension also applies to the market for intimate hygiene products for the following reasons: the distribution channels are national and differ between countries; pricing is on a national basis; marketing is conducted on a national basis; and brands and packaging often differ between countries. The market investigation did not bring up alternative market definitions. Therefore the relevant geographic definition for the markets for OTC products and for intimate hygiene products is considered, for the purposes of this case, to be national.

3. Assessment

33. As said above, the concentration will give rise to 9 horizontally affected markets in the area of OTC products, including 8 markets based on the ATC 3 categories.
34. Following the transaction, the parties would have significant market shares above 35% and with an increment above 1% in the following 4 markets: OTC D8A in the Netherlands, OTC R5A market in Ireland and in the UK and OTC A6A market in the UK. These markets are discussed below in more detail.
35. The remaining 5 affected markets where the parties have overlapping activities and market shares below 35% are: OTC D8A in Belgium ([30-40] %, Reckitt Benckiser: [30-40]%, BHI: [0-5]%), OTC N2B in the UK ([20-30]%, Reckitt Benckiser: [0-5]%, BHI: [20-30]%) and Ireland ([20-30]%, Reckitt Benckiser: [5-10]%, BHI: [20-30].%), OTC R2A in the UK ([20-30]%, Reckitt Benckiser: [0-5]%, BHI: [20-30]%) and intimate hygiene products¹⁵ in France ([15-20]%, Reckitt Benckiser: [10-15]%, BHI: [0-5]%).
36. In all of the above mentioned markets, with the exception of the Irish market for OTC N2B, the overlap between the parties' activities is small. The investigation has confirmed that competition concerns are unlikely to arise as several competitors remain and they include either market leaders or companies with strong market positions. The competitors include GlaxoSmithKline, Wyeth Consumer Healthcare and Pfizer in the relevant markets in the UK and Ireland, Viatris and Qualiphar in Belgium and Roche Nicolas and Laboratoire Iprad in France. Third parties in their replies to the Commission's questionnaires have not raised any substantiated concerns on any of these markets. Therefore the concentration is unlikely to significantly

¹⁵ Intimate hygiene products: personal care products that are used to wash and clean intimate areas of the female body.

impede effective competition in these markets, which will not be further discussed in the decision.

OTC D8A (antiseptics and disinfectants) in the Netherlands

37. On the basis of a market of antiseptics and disinfectants excluding Reckitt Benckiser's *Dettol*, the market would not be affected as only BHI is active and there is no overlap between the parties' activities.
38. On the basis of the D8A classification, therefore including *Dettol* but excluding *Calendulan*, the parties' combined market share amounted to [50-60]% by value (Reckitt Benckiser: [20-30]%; BHI: [30-40]%) in 2004. As a result of the transaction, the new entity would face one main competitor, Viatris, which owns the *Betadine* brand and had a market share of [30-40]% by value in 2004.
39. On the basis of a market which would comprise the *Calendulan* brand¹⁶, the parties' combined market share amounted to [30-40]% by value (Reckitt Benckiser: [15-20]%; BHI: [20-30]%) in 2004, whereas Viatris' and VSM's had respectively a market share of [20-30]% and [30-40]% by value.
40. Despite the fact that Reckitt Benckiser would be the largest market participant following the transaction, the parties claim that the transaction will not significantly impede competition in any possible antiseptics and disinfectants market in the Netherlands. The parties point out that if *Dettol* and *Sterilon* are assessed as belonging to the same product market, they nevertheless are not close substitutes for the reasons explained in paragraphs 17 to 22.
41. The Commission's investigation has confirmed that *Dettol* and *Sterilon* are not close competitors and it is unlikely that customers displaced by a price rise for one of the products will be picked up through sales of the other product. Therefore, on any alternative product market definitions, the concentration is unlikely to significantly impede effective competition in the OTC antiseptic and disinfectant market in the Netherlands.

OTC R5A (cold preparations without anti-infectives) in Ireland and in the United Kingdom

OTC R5A in Ireland

42. In Ireland, the parties sell their OTC R5A products under the brands *Lemsip* for Reckitt Benckiser and *Nurofen Cold & Flu* for BHI. *Lemsip* is a paracetamol based product that is predominantly sold in powder form in sachets for dilution in hot water and *Nurofen Cold & Flu* is an ibuprofen based product only sold in tablet.
43. On the basis of a market comprising only products classified under the R5A category, the parties would have a combined market shares of [40-50]% by value (Reckitt Benckiser: [40-50]%, BHI: [5-10]%). On the basis of an enlarged product market

¹⁶ As already mentioned above the parties also indicated that there are other wound healing products available in the Netherlands and that they consider that all of these products also compete with D8A products in the Netherlands. However, the parties have focussed on VSM's *Calendulan* because, in their view, it is seen as a key competitor and is regarded by ACNielsen as part of the same market.

definition as described in paragraph 28, the parties would have a combined market share of [30-40]% (Reckitt Benckiser: [30-40]%, BHI: [5-10]%) by value.

44. The parties will face competition of large pharmaceuticals groups with strong brands such as Pfizer with *Sinutab* ([20-30]% on the Irish R5A market and [30-40]% on the enlarged product market), Unigreg with *Uniflu* ([10-15]% and [10-15]%) and GlaxoSmithKline with *Beechams* ([10-15]% and [5-10]%).
45. Furthermore the parties submit that their products are not the closest substitutes as they differ in format, active ingredient and distribution channel. In fact, because, BHI's product, *Nurofen Cold & Flu*, contains ibuprofen and pseudoephedrine (a decongestant), it is only available behind the counter in pharmacies for safety reasons. On the other hand [>70]% of *Lemsip*'s sales are in the grocery channel.
46. In their reply to the Commission in the course of the market investigation, all customers and competitors confirmed the submission of the parties and indicated that *Beechams*, GlaxoSmithKline's brand is in fact considered as the closest substitute to Reckitt Benckiser's *Lemsip*. Like *Lemsip*, *Beechams* is available in powder, is based on paracetamol and is also available in the grocery channel.
47. The parties explain that they anticipate a substantial growth of the own label products in Ireland from pharmaceutical wholesalers, pharmacy retail chains and grocery retailers. Own label is already a significant segment in the UK and as the same wholesalers and retailers who offer own labels in the UK are also active in Ireland, it is likely that own labels will develop in Ireland.
48. In conclusion, the high combined market share overstates the transaction's competitive impact because Reckitt Benckiser and BHI's products are relatively distant substitutes, and because of the presence of strong competitors with closer products. Therefore, and in the absence of concerns raised by any third party during the market investigation, the concentration is unlikely to significantly impede effective competition in the Irish market for OTC R5A market. .

OTC R5A in the UK

49. On the basis of a market comprising only products classified under the R5A category, the parties would have a combined market shares of [30-40]% by value (Reckitt Benckiser: [30-40]%, BHI: [0-5]%) in the UK. On the basis of an enlarged product market definition as described in paragraph 28, the parties would have a combined market share of [20-30]% by value (Reckitt Benckiser: [20-30]%, BHI: [0-5]%). The parties sell their OTC R5A products under the brands *Lemsip* for Reckitt Benckiser and *Nurofen Cold & Flu* for BHI.
50. On both alternative product market definitions, the parties would still face competition from strong competitors such as GlaxoSmithKline ([30-40]% on the narrower market and [20-30]% on the enlarged market) and Pfizer ([10-15]%; [15-20]%). Furthermore the fact, developed in paragraphs 45 and 46 for the Irish market, that the parties' brands are not the closest substitutes, remain valid for the UK market where GlaxoSmithKline also markets its brand *Beechams*. Hence, in view of the minimal competitive overlap, the presence of strong competitors, the distant substitutability of the parties' products and the absence of concerns raised by any third party during the market investigation, the concentration is unlikely to

significantly impede effective competition in the OTC R5A market in the United Kingdom.

OTC A6A (laxatives) market in the United Kingdom

51. The parties' combined market share would amount to [40-50]% (Reckitt Benckiser: [40-50]%, BHI: [0-5]%) in the United Kingdom. However the transaction will not significantly change the market position of the parties as Reckitt Benckiser was already the market leader and the increment due to the acquisition of BHI is rather minimal. The next competitors on A6A in the UK are Boehringer Ingelheim ([15-20]%), Novartis ([5-10]%) and Merck ([5-10]%). During the market investigation competitors and customers have not revealed any competition concerns. Therefore the concentration is unlikely to significantly impede effective competition in the OTC A6A market in the United Kingdom.

B. Vertical aspects

Active ingredients

52. In previous decisions the Commission concluded that active ingredients form a separate market which is upstream of the market of the finished pharmaceutical products. As neither Reckitt Benckiser nor BHI is active in the manufacture or supply of active ingredient, this is not an affected market.

Contract manufacturing of pharmaceuticals

53. Contract manufacturing of pharmaceuticals is a service provided by pharmaceutical manufacturers to third parties outsourcing some or all of their manufacturing requirements. Whereas Reckitt Benckiser is not active as a contract manufacturer and only manufactures for itself, BHI is active in contract manufacturing primarily to use spare capacities at its factories¹⁷.
54. On the basis of an EEA-wide market for contract manufacturing of solid dose and powder pharmaceuticals, which the parties consider to be the relevant market, the new entity's market share would be below 5%. Therefore the transaction will not affect this market of contract manufacturing. Despite the parties' positions on certain downstream OTC markets (see above) no foreclosure concerns would arise and affect these markets of OTC products. This conclusion is also supported by the fact that there is ample capacity in Europe and worldwide for the manufacture of OTC medicines.

V. CONCLUSION

55. 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.

¹⁷ [2-5]% of the output of its factories is contract manufacturing for third parties.

For the Commission
(signed)
Neelie KROES
Member of the Commission