

***Case No COMP/M.4242 -  
THERMO ELECTRON /  
FISHER SCIENTIFIC***

Only the English text is available and authentic.

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

---

Article 6(2) NON-OPPOSITION  
Date: 09/11/2006

***In electronic form on the EUR-Lex website under document  
number 32006M4242***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09/11/2006

SG-Greffe(2006) D/206717

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4242 – THERMO ELECTRON / FISHER  
SCIENTIFIC  
Notification of 19.09.2006 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 19.09.2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Thermo Electron Corporation (“Thermo”, USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Fisher Scientific International (“Fisher”, USA) by way of purchase of shares.
2. In the course of the proceedings, the notifying party submitted undertakings designed to eliminate competition concerns identified by the Commission, in accordance with Article 6(2) of the Merger Regulation. In the light of these modifications, 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 functioning of the EEA Agreement.

**I. THE PARTIES**

3. Thermo is a publicly listed company incorporated in the US whose principal activity is the production and sale of analytical instruments, scientific equipment, services and

---

<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

software for a variety of scientific laboratories. Thermo reports its business in two segments: (i) Life and Laboratory Science and (ii) Measurement and Control. In 2005, it registered a world-wide turnover of €2.1 billion, of which around €640 million in Europe.

4. Fisher is a publicly listed company based in the US. It is active in the supply of product and services to the scientific community. Fisher reports its business in three segments: (i) Scientific Products and Services, (ii) Healthcare Products and Services, and (iii) Laboratory Workstations. In 2005, it registered a world-wide turnover of €4.6 billion, of which around €750 million in Europe.

## **II. THE OPERATION**

5. The notified operation consists in the merger between Fisher and a fully owned subsidiary of Thermo, set up for the purposes of the operation. Upon such merger, Thermo's subsidiary will cease to exist and all its shares will be converted in Fisher's shares, held by Thermo; simultaneously, all Fisher shares will be cancelled in exchange for the right to receive Thermo's shares in the proportion of two Thermo shares in reason of each Fisher share held.

## **III. THE CONCENTRATION**

6. With the operation, Thermo will acquire sole control over Fisher and the transaction 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<sup>2</sup>. Both have a Community-wide turnover in excess of €250 million, but none of the two achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## **V. RELEVANT MARKETS**

### GENERAL DESCRIPTION OF THE PARTIES' ACTIVITIES IN THE RELEVANT MARKETS

8. Both Thermo and Fisher are active in the production and sale of a number of products within the following broad areas:
  - i) laboratory equipment and consumables,
  - ii) clinical diagnostic equipment and consumables (for histology and cytology);
  - iii) electrochemistry products and consumables
9. Within each category, the concentration will give rise to horizontally affected markets for specific products, which will be described in more detail below.

---

<sup>2</sup> 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).

10. Additionally, Fisher is active in the distribution of laboratory equipment and consumables and of electrochemistry products and consumables. The concentration will give rise to vertically affected markets, also considered in detail below.

#### HORIZONTAL ASPECTS - RELEVANT PRODUCT MARKETS

##### *(i) Laboratory equipment and consumables*

11. Within the area of laboratory equipment and consumables, according to the information provided by the parties, the concentration will lead to horizontal overlaps with a combined market share exceeding 15% and an overlap exceeding 1% in the EEA or in any national market for the production and sales of the following products<sup>3</sup>:
- a. Concentrators and evaporators
  - b. Pipettes;
  - c. Pipette tips;
  - d. Microplates;
  - e. Microplate Stackers;
  - f. Circulating baths
  - g. Electrophoresis chambers.

#### *CONCENTRATORS AND EVAPORATORS*

12. Concentrators and evaporators consists of the equipment used to concentrate laboratory samples by removing the solvent (e.g. water, alcohol, ether etc.) from a solution to obtain a concentrated solute (e.g. a tissue sample to be further analysed in the laboratory). The notifying party acknowledges that the various types of equipment offered on the market use a wide range of methods for concentrating laboratory samples (including rotary concentrators, vortexing concentrators, nitrogen blowdown, and centrifugal evaporators). However, they consider that the different types of equipment are to a large extent substitutes and therefore belong to the same product market.
13. Whilst Thermo supplies a wide range of products within the concentrator and evaporator category, Fisher only supplies centrifugal evaporators. Therefore, the horizontal overlap between the parties only occurs for this type of equipment. Centrifugal evaporators operate using vacuum and heat to reduce the pressure in a tube containing the solution and favour the evaporation of the solvent. Centrifugation ensures that the solute remains at the bottom of the tube and avoids contamination from the solution.
14. The results of the market investigation do not support the notifying party' view that centrifugal evaporators belong to the same product market as other types of concentrators and evaporators. Competing manufacturers, as well as distributors and customers of centrifugal evaporators report that, compared to other types of concentrators and evaporators, centrifugal evaporators have different functionalities,

---

<sup>3</sup> For the following products, the proposed concentration will either lead to no or insignificant horizontal overlap (below 1% in the EEA or in any national market), or in presence of more significant overlap combined market shares will in any event not exceed 15% under any possible geographic market definition: refrigerators and freezers; ULT freezers; cryogenic storage; laboratory ovens; laboratory vacuum ovens; laboratory furnaces; non-CO2 incubators; CO2 incubators; centrifuges; shakers; water baths; spectrophotometers. In the light of the above, these products will not be treated in the remainder of the analysis.

are used to perform different processes and target different customer groups. The possibility of switching from the point of view of the demand is therefore limited and switching would not be likely as the consequence of a small but permanent price increase for centrifugal evaporators. The Commission therefore concludes that centrifugal evaporators do not belong to the same product market as other types of evaporators and concentrators.

15. A number of market players also consider that a separate market should be identified within centrifugal evaporators for the high throughput centrifugal evaporators that are used for parallel synthesis, i.e. to process a large number of solutions in parallel. Centrifugal evaporators for parallel synthesis are significantly more complex and more expensive than other types of centrifugal evaporators and can be used in conjunction with highly volatile or aggressive solvents. Switching from high throughput to low throughput centrifugal evaporators is in most cases unfeasible or highly inefficient. As a consequence, a small but permanent price increase for centrifugal evaporators for parallel synthesis would not lead to switching to lower throughput and less complex types of equipment.
16. The market investigation has nevertheless also indicated that, as it is common for complex equipment sold to laboratories, centrifugal evaporators are differentiated goods that can vary in size, quality, capacity and price. These differences do not necessarily indicate that separate markets should be identified, but should rather be taken into account in the analysis of the closeness of substitution within the competitive assessment.
17. In any event, for the purposes this decision it is not necessary to conclude whether a separate narrower market for centrifugal evaporators for parallel synthesis should be identified within the market for centrifugal evaporators, as the competitive assessment would not change under any plausible alternative definition.

#### *PIPETTES*

18. Pipettes are handheld instruments used to measure and to inject precise quantities of liquids into other containers such as beakers and test tubes. Pipettes can be manual (the user forces the liquid through the pipette by pressing on a piston) or electronic (the user pushes a button which transmits electronically the signal to the piston). Pipettes can be single or multi-channel (usually 8 or 12 channels).
19. According to the notifying party, manual and electronic pipettes belong to the same market as they offer the user the same functionality. Additionally, prices of electronic pipettes have declined recently narrowing the gap with manual pipettes. The price differential between manual and electronic pipettes is currently of the same order of magnitude of the price differential between different models within the same category.
20. The market investigation has not confirmed the notifying party's claim that manual and electronic pipettes belong to the same product market. Firstly, electronic pipettes offer to users different ergonomics than manual pipettes, in particular regarding the risk of strain injuries caused by repeated use. Secondly, for comparable models, the price of electronic pipettes is significantly higher than for manual pipettes. This fact is confirmed by data provided by the parties, from which it results that the price of Thermo's electronic pipettes is between [20-30]% and [160-170]% higher than for corresponding manual models, while the corresponding ratios are between [50-60]% and [130-140]% for Fisher. Thirdly, users of pipettes tend to prefer one type to the

other and do not easily switch from their favourite type following a small price increase. In particular, low switching rates between electronic and manual pipettes have been observed in recent years, notwithstanding the fact that the gap in prices between the two types has decreased. Mechanical pipettes still account for the lion's share of the market, corresponding to 80% to 90% in value.

21. The market investigation therefore provides strong indications that manual and electronic pipettes belong to separate product markets. In this specific case, however, the precise product market definition can be left open as the proposed transaction will not give rise to competition concerns under any alternative possible definition.

#### *PIPETTE TIPS*

22. A pipette tip is a single injection moulded piece of plastic that is used in conjunction with pipettes and is replaced after each experiment. Both pipette suppliers and non integrated companies supply pipette tips. Pipette tips of the different manufacturers are to a large extent standardised and compatible. The market investigation confirms that pipette tips form a relevant product market.

#### *MICROPLATES*

23. Microplates are trays with individual wells made of moulded plastic. Samples are injected in microplates together with an assay and subsequently measured using a microplate reader. Microplates come in different sizes and with different number of individual wells. Different types can however be manufactured by injection moulding in a relatively easy fashion. For this reason, they are deemed to belong to the same relevant product market. The market investigation has brought no elements pointing to a different definition of this product market.

#### *MICROPLATE STACKERS*

24. Microplate stackers are equipment used to handle microplates in a semi-automatic fashion and thus avoiding manual stacking of microplates in a rack. They are used by high volume users in conjunction to a dispenser, which injects an assay into the sample. The market investigation has brought no elements pointing to a different definition of this product market.

#### *CIRCULATING BATHS*

25. Circulating baths are equipment used to cool or heat liquids (water or a liquid coolant), which is in turn used to regulate the temperature of a separated external reservoir. Additionally, circulating baths include an internal bath for heating or cooling objects. Circulation of the liquid in the internal bath accelerates the heating or cooling process. The market investigation has brought no elements pointing to a different definition of this product market.

#### *ELECTROPHORESIS CHAMBERS*

26. Electrophoresis chambers are equipment made of a chamber with an electrode at either end that allows the generation of an electric current within the chamber. Electrophoresis chambers are used to separating large molecules (such as DNA fragments or proteins) from a mixture of similar molecules by exploiting their reaction to the electrical current.

The market investigation has brought no elements pointing to a different definition of this product market.

*(ii) Clinical diagnostic equipment and consumables*

27. Within this area, according to the information provided by the parties, the concentration will lead to horizontal overlaps with a combined market share exceeding 15% and an overlap exceeding 1% in the EEA or in any national market for the following products<sup>4</sup>:
- a. Tissue processors;
  - b. Embedders;
  - c. Microtomes;
  - d. Cryostats;
  - e. Cover slippers.

*TISSUE PROCESSORS*

28. Tissue processors are equipment used to process tissue samples in order to remove water and impurities (washing the sample in alcohol) and prevent decay (through immersion in formalin). While tissue processors vary in size, quality, capacity and price, the market investigation does not indicate that the market should be segmented at a narrower level, given the commonalities between the different types of tissue processors.

*EMBEDDERS*

29. Embedders are equipment used to embed processed samples in paraffin wax to form a solid block ready for sectioning. The market investigation has confirmed the existence of a relevant product market for embedders.

*MICROTOMES*

30. Microtomes are equipment used to section embedded samples to a predefined thickness. The actual cutting is done by a microtome blade that is mounted on the microtome and is replaced regularly: microtome blades are therefore not integral part of microtomes. The sectioned samples are subsequently mounted on a microscope slide for further study at the microscope. While microtomes can vary in size, quality, capacity and price, the market investigation does not indicate that the market should be segmented at a narrower level, given the commonalities between the different types.

*CRYOSTATS*

31. Cryostats are equipment used to freeze and cut samples, which have not been previously embedded. The main advantage of this process is that it allows having observable samples in a significantly shorter timeframe than through tissue processing, embedding and sectioning with a microtome. However, the quality of the sample

---

<sup>4</sup> For the following products, the proposed concentration will either lead to no or insignificant horizontal overlap (below 1% in the EEA or in any national market), or in presence of more significant overlap combined market shares will in any event not exceed 15% under any possible geographic market definition: processing consumables as alcohol, xylene and formalin; embedding consumables such as paraffin wax and cassettes; microtome and cryostat blades; microscope slides; cover slips; mounting media; histology stains, primary stainers, cytology centrifuges; cytofunnels; and cytology stains. In the light of the above, these products will not be treated in the remainder of the analysis.

obtained may not be as good as with microtomy, e.g. due to the crystallisation of water molecules during the freezing process. For these reasons, cryostats are used for different purposes than microtomes (i.e. when immediate diagnosis is required). Additionally, cryostats are significantly more expensive than microtomes as they include a refrigerating unit. It is therefore appropriate, in line with the outcome of the market investigation, to define a separate product market for cryostats.

#### *COVER SLIPPERS*

32. Cover slippers are equipment used to fix a cover slip to a microscope slide, using a mounting media. The notifying party submits that cover slippers form a separate product market. The market investigation has brought no elements pointing to different conclusion on this product market.

#### *(iii) Electrochemistry products and consumables*

33. Within this area, according to the information provided by the parties, the concentration will lead to horizontal overlaps with a combined market share exceeding 15% and an overlap exceeding 1% in the EEA or in any national market only for ion selective electrodes<sup>5</sup>.
34. Ion selective electrodes are components of ion selective meters, equipment used to measure voltage. The sensing part of the electrodes is made of a ion-specific membrane which allows the pass though of the ions which are being detected. The market investigation has confirmed the existence of a relevant product market for ion selective electrodes.

#### HORIZONTAL ASPECTS - RELEVANT GEOGRAPHIC MARKETS

35. The notifying party submits that the relevant geographic markets for the production and sale of all the products described above are at least EEA-wide.
36. The notifying party submits that a relevant part of their production is sold from manufacturers to independent distributors, which often offer competing brands for a given product to the final customers in their catalogues. The relevant geographic dimension of the markets, therefore, should be determined having regard to the relation between manufacturers and distributors. In this respect, the notifying party notes firstly that all manufacturers have centralised production facilities (in Europe or elsewhere) from which they serve all European countries without incurring in significant transport costs. Secondly, some distributors (chiefly Fisher itself and VWR, a competitor) have a pan-European presence, while others operate cross border, albeit in a limited number of countries. Thirdly, manufacturers have centralised sales and marketing facilities and usually set list prices to distributors at European level, from which discounts are negotiated at an individual, not country specific level. Finally, technical standards are harmonised across European countries and no significant technical barriers exist between EEA countries.

---

<sup>5</sup> For the following products, the proposed concentration will either lead to no or insignificant horizontal overlap (below 1% in the EEA or in any national market), or in presence of more significant overlap combined market shares will in any event not exceed 15% under any possible geographic market definition: meters; pH electrodes; dissolved oxygen electrodes; conductivity electrodes; pH, ion, dissolved oxygen and conductivity solutions. In the light of the above, these products will not be treated in the remainder of the analysis.



37. While maintaining that the relevant geographic dimensions of the markets is at least EEA-wide, the notifying party also provides a discussion of the substantive aspects of the proposed concentration on nationally defined product markets.
38. The results of the market investigation support only in part the geographic market definition proposed by the notifying party. While it is correct that a relevant part of the production is sold to independent distributors, this is not always the case. In fact, the importance of the independent distribution sales channel varies considerably both between product areas (it is more important for laboratory goods and electrochemistry goods and consumables than for clinical diagnostic goods) and even within the same product areas (it is more important for consumables than for equipment). In particular, manufacturers recurrently undertake direct distribution or appoint direct exclusive distributors at national level for the sales of more sophisticated equipment, in particular in the area of clinical diagnostics.
39. Additionally, independent distributors offering competing brands for the same products are predominantly based at the national level. The examples provided by the notifying party of international or cross border independent distributors do not provide a representative picture of the distribution landscape and manufacturers often negotiate prices with national distributors. Even if list prices to distributors are set at the European level, the actual negotiation focus on the level of discount a given distributor obtains from the list prices, which can easily vary on the basis of country specific factors.
40. Based on these elements, it cannot be excluded that at least for some products affected by the transaction, such as centrifugal evaporators including evaporators for parallel synthesis, the relevant geographic markets should be defined at national, instead of EEA-wide level. In the present case, however, there is no need to conclude on the geographic market definitions as the competitive assessment of the concentration would not change irrespective of the definition retained.

#### VERTICAL ASPECTS - RELEVANT PRODUCT MARKETS

41. As indicated above, Fisher is active as a distributor of laboratory equipment and life science products, including laboratory equipment and consumables, and electrochemistry products within the EEA. Thermo is only active as a manufacturer but not as a distributor in these fields.<sup>6</sup> Therefore the concentration gives rise to vertically affected markets in the field of laboratory equipment and life science products and in the field of electrochemistry products.
42. According to the notifying party, the relevant market should be defined as the market for distribution of both laboratory and electrochemistry products taken together as a basket of goods to be supplied to final customers. The nature of the distribution business requires selling a wide range of different products (usually in the number of hundreds or thousands) based on catalogues to final costumers. In essence, the product categories included are equipment and apparatus, consumables and chemicals.<sup>7</sup>

---

<sup>6</sup> Fisher has *de minimis* activities as a distributor of clinical diagnostic equipment and consumables. It realizes less than €[...] in the EEA attributable to clinical diagnostic products, mainly in the field of consumables.

<sup>7</sup> Equipment and apparatus include for instance shakers, stirrers, ovens, incubators and e-chemistry instruments such as meters. Consumables include glassware such as beakers and flasks; plasticware like

Concerning the distribution of clinical diagnostic, the notifying party claims that such products bear certain specificities, as regards in particular distribution modalities (exclusive distribution) and customer needs (e.g. after sales services). Accordingly, distribution of clinical diagnostics should be considered as a separate market. However, it is not necessary to define precisely the relevant product market with regard to distribution, as the competitive analysis will remain unchanged irrespective of the market definition.

#### VERTICAL ASPECTS - RELEVANT GEOGRAPHIC MARKETS

43. As to the geographic market definition, the distribution of laboratory and electrochemistry products takes place at national level. The majority of distributors operate within one Member State and only VWR<sup>89</sup> and Fisher are present across the EEA, with varying market shares in different national markets. It appears that local sales presence is necessary, as customers often require complex assistance with regard to equipments and they need to be delivered with smaller, less expensive items within short delays. Indeed, Fisher is organised on a country-by-country basis, operates with different brands and catalogues and charges different prices in the different national markets. The national geographic market definition was clearly confirmed during the market investigation.
44. In the light of the above, the Commission takes the view that the appropriate geographic market definition for distribution of laboratory and electrochemistry products is national.

### **VI. COMPETITIVE ASSESSMENT**

#### HORIZONTAL ASPECTS

##### (i) Laboratory equipment and consumables

###### *CENTRIFUGAL EVAPORATORS*

45. The notifying party has submitted figures on the market of centrifugal evaporators and for the narrower market of centrifugal evaporators for parallel synthesis. Fisher is active in this market through its subsidiary Genevac and Thermo through its brand Thermo Savant.
46. Regarding centrifugal evaporators, the notifying party estimates the 2005 market size in € [10-15] million EEA-wide. The combined entity's market share would reach [30-40]% (Thermo [10-20]%, Fisher [15-25]%), behind market leader Eppendorf AG ("Eppendorf") of Germany (with a market share of [35-45]%) and in front of Martin

---

pipette tips and vials, filtration products, microplates culture media and safety-related products such as gloves, masks etc. This category includes consumables such as electrodes and solutions. Finally, chemicals include solvents, organics, acids, buffers and reagents.

<sup>8</sup> According to the information submitted by the parties, the strongest competitor of Fisher in distribution is VWR. The company is the leading distributor in many Member States, such as France ([25-35]%), Germany ([15-25]%), the Netherlands ([25-35]%), UK ([20-30]%) and Sweden ([30-40]%) within the laboratory and life science distribution market.

Christ Gefriertrocknungsanlagen GmbH (“Martin Christ”), also of Germany (with a market share of [15-25]%).

47. At the national level, the figures provided by the parties show important overlaps in the UK (the second market in size after Germany with €[<3] million), where the combined market share would reach [75-85]% (Thermo [10-20]%, Fisher [55-65]%) and Sweden (market size €[<3] million) with a combined market share of [40-50]% (Thermo [0-5]%, Fisher [35-45]%). In the other most important European markets for this product combined market share would be around or in excess of 30% (Germany [25-35]%, France [30-40]%, Italy [30-40]%, and Spain [30-40]%). In the remaining national markets – which are often very small, with only a few units sold per year – the parties’ combined market share would be usually lower.
48. According to the notifying party, these figures are not indicative of competitive concerns, since the UK and Swedish markets are relatively small and since competitors are present in these markets. Furthermore, the notifying party mentions a number of potential entrants in the market in addition to the existing market players.
49. The Commission market investigation has not confirmed the figures provided by the parties. Indeed, it appears that the parties have overestimated the market size and the market shares of their competitors. In particular, the market response has been that Eppendorf’s market position is significantly smaller than what has been estimated by the parties. Unlike the parties, Eppendorf currently offers a single model of centrifugal evaporators, which is placed at the low end of the complexity and throughput scale for this type of products. According to the information gathered by the Commission, Eppendorf’s market share is well below 30% in all major national markets as well as at the EEA level. Conversely, the combined market share of the parties, both offering a broad range of models, would be well in excess of 40% in Germany and Italy, in excess of 50% in France, Sweden and Spain as well as around 80% in the UK. Combined market shares at the EEA level would also exceed 40%.
50. Furthermore, the Commission market investigation has not brought any elements to support the notifying party’s claim that new entry in the market is likely to occur in the short or medium term. While manufacturers in neighbouring markets (other types of centrifuges or concentrators) could in theory decide to develop a line of centrifugal evaporators, there has been no indication that they actually have the intention or the incentive to do so.
51. In view of these elements, the Commission concludes that, in the absence of appropriate remedies, the proposed transaction raises serious doubts as to its compatibility with the common market as it would be likely to significantly impede effective competition in the market for centrifugal evaporators both at the EEA level and in its major national markets (Germany, UK, France, Italy, Spain and Sweden), thereby allowing the merged entity to raise prices to the detriment of customers.
52. Turning to the centrifugal evaporators for parallel synthesis, it should be first noted that this market (or segment within the market for centrifugal evaporators) is very small in Europe. According to the notifying party, the market size amounted to €[<5] million at EEA level in 2005. Only a few dozen units were sold, given that centrifugal evaporators for parallel synthesis are complex machines with a unit value that can vary from around €20,000 to over €100,000. The bulk of these sales take place in the larger Member

States: e.g. market leader Fisher recorded sales in 2005 in Germany, France, UK, Italy, Sweden and Austria only.

53. The notifying party stresses that no competition concern should arise from the concentration for what regards centrifugal evaporators for parallel synthesis. Despite the fact that Fisher is clearly the leading player, with a 2005 market share of [55-65]%, Thermo's presence in Europe is very limited and its addition would be limited to [0-5]%. Additionally, Fisher considers its closest competitor to be Martin Christ, whose market share is estimated at [25-35]%, and not Thermo.
54. The result of the market investigation, however, gives a substantially different picture of the competitive landscape for centrifugal evaporators for parallel synthesis. In particular, while the market confirmed that Fisher is the leading supplier of this type of equipment, it did not consider Martin Christ to currently be the most significant competitive constraint to Fisher. In particular, the position of Martin Christ is reported to have deteriorated in recent years. While it enjoyed a position of market leader until 4 to 5 years ago, the decision not to develop its product line of centrifugal evaporators for parallel synthesis led to a rapid decrease in its market share over the past three years, well below the level attributed to it by the notifying party.
55. Conversely, the market believes that Fisher and Thermo are the closest substitute for centrifugal evaporators for parallel synthesis. Fisher has recently developed new high throughput systems and has become the clear market leader in Europe in recent years. At the same time, Thermo has been expanding its product range from lower throughput routine models (sold under its Speed-Vac brand) to higher throughput systems. Although Thermo's European presence is currently not comparable to Fisher's, it clearly constitutes its most important competitive constraint, over and beyond what could be inferred by simply adding market shares.
56. In this respect it should be noted that, in its assessment of the transaction, the US Federal Trade Commission has concluded that the merger may give rise to competition concerns in the market for high-performance centrifugal vacuum evaporators (which correspond to the products that in this decision are referred to as centrifugal evaporators for parallel synthesis) in the US, due to very strong market position of Thermo and Fisher. In order to address these concerns, the FTC has requested to Thermo to divest the whole overlap in this market.
57. Based on these elements, the Commission has serious doubts that the proposed concentration would allow the merged entity to hold significant market power in the production and sale of centrifugal evaporators for parallel synthesis and will give it the ability to raise prices to the detriment of customers. The Commission therefore concludes that, in the absence of appropriate remedies, the proposed transaction raises serious doubts as to its compatibility with the common market for what regards centrifugal evaporators for parallel synthesis.

58. According to the figures submitted by the parties<sup>10</sup>, the total market for pipettes (both manual and electronic) € [35-40] million EEA-wide in 2005. The combined market share of the parties would reach [15-25]% (Thermo [15-25]%, Fisher [0-5]%). At national level, combined market shares would exceed [25-35]% in Finland ([50-60]%, of which [50-60]% is imputable to Thermo and less than [0-5]% to Fisher) and Norway ([30-40]%), of which [30-40]% Thermo and [0-5]% Fisher). Given the limited combined market shares and the very small overlaps in the markets where the combined entity would be strongest, the Commission concludes that adverse competitive effects as a result of the proposed concentration are unlikely in the market for pipettes in the EEA or in any national market.
59. For the reasons set out in the section on market definition, the Commission has also analysed the competitive effects of the proposed concentration on the narrower markets for manual pipettes and for electronic pipettes.
60. In manual pipettes (a €[30-35] million market according to the parties' figures), the combined market share of the parties would reach [15-25]% at the EEA level (Thermo [15-25]%, Fisher [0-5]%), with market shares higher than 30% in Finland ([50-60]%, of which Thermo [50-60]% and Fisher less than [5]%), and Norway ([35-45]%, no overlap as Fisher is not present in this market). Given the limited combined market shares and the very small overlaps in the markets where the combined entity would be strongest, the Commission concludes that adverse competitive effects as a result of the proposed concentration are unlikely in the market for manual pipettes in the EEA or in any national market.
61. In electronic pipettes (a €[5-10] million market according to the parties' figures) the combined market share of the parties would reach [25-35]% at the EEA level (Thermo [5-15]%, Fisher [15-25]%), with market shares higher than 30% in Germany ([40-50]%, of which Thermo [0-5]% and Fisher [35-45]%), the UK ([35-45]%, of which Thermo [5-15]% and Fisher [25-35]%), Finland ([30-40]%, of which Thermo [25-35]% and Fisher [0-5]%) and Sweden ([25-35]%, of which Thermo [15-25]% and Fisher [5-15]%). The market leader at European level and in most national markets will remain Biohit Oyj, with a market share of [30-40]%, followed by Eppendorf and Brand GMBH with [10-20]% each.
62. The figures collected in the course of the market investigation confirm to a large extent the estimates of the parties. Although the overall EEA market size, at €5.2 million in 2005 is slightly smaller than what the notifying party reports, the market investigation confirms that Biohit Oyj is the clear market leader, with a market share between 35% and 45%. The parties' combined market share would reach [25-35]% (Thermo [5-15]%, Fisher [15-25]%), and Eppendorf would be the third biggest player with a market share between 15% and 25%. The market investigation also indicates that Brand GMBH's actual market share is lower than what has been estimated by the parties. It should however be taken into account that this company is a relatively new entrant in the market for electronic pipettes (2005 was its first full year with a complete range

---

<sup>10</sup> The parties provided two set of figures on market data for pipettes, one with the Form CO and a second one, more detailed, on 9 October 2006 in reply to a request of information from the Commission. The two sets of figures differ radically in some instances (e.g. for electronic pipettes). In the decision, only the most recent set of figures will be discussed.

offering) and therefore its 2005 market share is not necessarily indicative of its competitive position.

63. Similarly to what estimated by the parties, the market investigation indicates that at the national level the combined entities' market share would be highest in Germany ([40-50]%, of which Thermo [0-5]% and Fisher [40-50]%) and the UK ([40-50]%, of which Thermo [5-15]% and Fisher [30-40]%), with market shares in excess of 30% also in Finland and Sweden. From a competitive point of view, the situation at national level reflects the dynamics at the EEA level: post merger there would be four major electronic pipettes suppliers (the combined entity, Biohit Oyj, Eppendorf and Brand) active in virtually all national markets and ensuring effective competition to the merged entity.
64. The Commission therefore concludes that adverse competitive effects as a result of the proposed concentration are unlikely in the market for electronic pipettes in the EEA or in any national market.

#### *PIPETTE TIPS*

65. According to the figures submitted by the parties, the market for pipette tips was estimated € [65-70] million EEA-wide in 2005. The combined market share of the parties would reach [20-30]% (Thermo [5-15]%, Fisher [10-20]%). At national level, combined market shares would be in excess of 70% in two very small markets (Cyprus and Iceland, both with a market size lower than €[300,000]); between 40% and 50% in Belgium, France, Norway and Sweden; and between 30% and 40% in Denmark, Finland, and The Netherlands.
66. Notwithstanding the high market shares in some national markets, based on the evidence collected in the market investigation it appears that there are no concerns arising out of the transaction in the above markets due to several reasons.
67. Firstly, pipette tips are rather homogeneous products. Although they can vary in size and purpose, they can be manufactured by most suppliers of moulded plastic products which respect sufficient hygiene standards. Secondly, pipette tips are to a large extent interchangeable, meaning that pipettes usually work with a standard size pipette tips. This makes switching from one brand of pipette tips to the other very easy for final customers (it should be borne in mind that the cost of a pipette tip is a fraction of the cost of a pipette, and that pipette tips are as a norm disposed after each use). Thirdly, a large portion of pipettes tips sold in the market are not branded and a significant part is 'own labels' of the distributors of laboratory consumables. Fourthly, there are a large number of competitors to the party that are capable of supplying pipette tips to the market without incurring any capacity limitation: these include competing pipette producers such as Biohit Oyj, Eppendorf, Brand, Gilson, Rainin and others. Fifthly, barriers to entry in the market are low, in particular through sourcing of the product from third party plastic moulders.
68. In light of the above, the Commission concludes that the proposed concentration is not likely to give rise to a significant impediment of effective competition for pipette tips in the EEA level or in any national market.

#### *MICROPLATES*

69. According to the figures submitted by the parties the market for microplates was worth €[85-90] million EEA-wide in 2005. The combined market share of the parties would be of just under [10-20]% (Thermo [0-5]%, Fisher [5-15]%). At national level, combined market shares would reach [40-50]% Belgium (albeit with a small overlap: Thermo [0-5]% and Fisher [40-50]%) and be lower than 25% in every other national market.
70. The market investigation showed that the markets for microplates share many features with the pipette tips market in term of product homogeneity, interchangeability between products from different suppliers, and large number of competitors including independent producers and distributors' own labels. Having regard to the limited overlaps between the parties and the market's characteristics, the Commission concludes that the proposed concentration is not likely to give rise to a significant impediment of effective competition for microplates in the EEA level or in any national market.

#### *MICROPLATE STACKERS*

71. According to the figures submitted by the parties the market for microplates was worth €[5-10] million EEA-wide in 2005. The combined market share of the parties would be of [5-15]% (Thermo [0-5]%, Fisher [5-15]%). At national level, combined market shares would reach [20-30]% in the UK (with a small overlap: Thermo [0-5]% and Fisher [20-30]%) and be lower than 25% in every other national market. Having regard to the limited overlaps between the parties and the feedback received in the course of the market investigation, the Commission concludes that the proposed concentration is not likely to give rise to a significant impediment of effective competition for microplate stackers in the EEA level or in any national market.

#### *CIRCULATING BATHS*

72. According to the figures submitted by the parties the market for circulating baths was worth €[40-45] million EEA-wide in 2005. The combined market share of the parties would be of [10-20]% (Thermo [10-20]%, Fisher less than [0-5]%). At national level, combined market shares would be highest in the UK, reaching [15-25]% (with a very small overlap: Thermo [15-25]% and Fisher [0-5]%). Having regard to the limited overlaps between the parties and the feedback received in the course of the market investigation, the Commission concludes that the proposed concentration is not likely to give rise to a significant impediment of effective competition for circulating baths in the EEA level or in any national market.

#### *ELECTROPHORESIS CHAMBERS*

73. According to the figures submitted by the parties the market for electrophoresis chambers was worth €[10-15] million EEA-wide in 2005. The combined market share of the parties would be under [0-5]%. At national level, combined market shares would be highest in Belgium, reaching [15-25]% (with a very small overlap: Thermo less than [0-5]% and Fisher [15-25]%). Having regard to the limited overlaps between the parties and the feedback received in the course of the market investigation, the Commission concludes that the proposed concentration is not likely to give rise to a significant impediment of effective competition for circulating baths in the EEA level or in any national market.

#### *(ii) Clinical diagnostic equipment and consumables*

#### *TISSUE PROCESSORS*

74. According to the figures submitted by the parties, the market for tissue processors was worth €[20-25] million EEA-wide in 2005. The combined market share of the parties would be of [15-25]% (Thermo [15-25]%, Fisher less than [0-5]%). At national level, combined market shares would reach [20-30]% in the Czech Republic (Thermo [10-20]% and Fisher [5-15]%) and be lower than 25% in every other national market where both parties are currently present. Having regard to the limited overlaps between the parties and the feedback received in the course of the market investigation, the Commission concludes that the proposed concentration is not likely to give rise to a significant impediment of effective competition for circulating baths in the EEA level or in any national market.

#### *EMBEDDERS*

75. According to the figures submitted by the parties, the market for tissue processors was worth €[0-5] million EEA-wide in 2005. The combined market share of the parties would be of [10-20]% (Thermo [5-15]%, Fisher [5-15]%). At national level, combined market shares would reach [30-40]% in the Czech Republic (Thermo [25-35]% and Fisher [0-5]%) and be lower than 25% in every other national market where both parties are currently present. Having regard to the limited overlaps between the parties and the feedback received in the course of the market investigation, the Commission concludes that the proposed concentration is not likely to give rise to a significant impediment of effective competition for circulating baths in the EEA level or in any national market.

#### *MICROTOMES*

76. In the market for microtomes (a €[10-15] million market according to the parties' figures), the combined market share of the parties would reach [20-30]% at the EEA level (Thermo [0-10]%, Fisher [15-25]%). At national level, the parties would reach high market shares in a number of countries: [45-55]% in Sweden (although with a small overlap: Thermo [0-5]% and Fisher [45-55]%), [45-55]% in the Czech Republic (Thermo [20-30]%, Fisher [15-25]%) and [45-55]% in Finland (Thermo [5-15]%, Fisher [35-45]%). The combined entity would also reach market shares between 30% and 40% in Austria, Denmark, Germany, Greece and Spain.
77. According to the parties, the clear market leader in microtomes is the German company Leica Microsystems ("Leica"), with an EEA market share of [40-50]% and a leadership position in most national market. Fisher is the number two in these markets, with a number of smaller players such as Thermo, Slee, Microtech and PFM.
78. The figures collected in the course of the market investigation confirm to a large extent the estimates of the parties. The overall EEA market size, at €15 million in 2005 according to the data gathered by the Commission, is slightly larger than the parties' estimate. Consequently the parties' combined market share results slightly smaller at [20-30]% (Thermo [0-10]%, Fisher [15-25]%). Leica is clearly the leader at European level, with a market share in excess of 50%. A similar pattern has been found also in the national markets, with the exception of some smaller markets. In Sweden, a middle size market with sales of €[500,000-1,000,000] where Fisher is the market leader and Thermo is hardly present (in 2005 it had sales amounting to €[...]), Leica will remain number two post merger. In the Czech Republic, a market of below €[500,000] in 2005, Leica will lose its leadership position post merger, but will remain a strong



number two after the merged entity. The same is true in Finland, a small market with sales of € [0-500,000] in 2005, where the merged entity will gain leadership position post merger, albeit with a limited addition from Thermo amounting to €[...] in sales.

79. The market investigation has also indicated that Leica and Fisher are the closest competitors in the microtomy market. The two companies have a long established presence in the market, a broad range of products and a reputation for high quality and continuous development of their products. Conversely, Thermo and the other smaller players in the market do not appear to constitute a very significant competitive constraint to the two market leaders, in terms of product range and quality. Thermo more in particular is perceived as having expanded into microtomy in order to expand its product range in equipment for clinical diagnostics, without however making significant inroads. Its products are generally considered inferior to those of Leica and Fisher.
80. In view of these elements, and in particular of the competitive constraint posed by Leica to the merging entity, the Commission concludes that the proposed concentration is unlikely to significantly affect effective competition in the market for microtomes in the EEA or in any national market.

#### *CRYOSTATS*

81. In the market for cryostats (a € [10-15] million market according to the parties' figures), the combined market share of the parties would reach [20-30]% at the EEA level (Thermo [0-10]%, Fisher [15-25]%). At national level, the parties would reach high market shares in Finland ([65-75]%, Thermo [30-40]%, Fisher [30-40]%) and the Czech Republic ([60-70]%, Thermo [40-50]%, Fisher [20-30]%). The combined entity would also reach market shares between 30% and 40% in Austria and Germany.

According to the parties, Leica is the leader in cryostats at the EEA level with a market share of [40-50]% and a leadership position in most national market. Fisher is usually the number two, and Thermo is generally within a group of smaller competitors such as Sakura, Slee and Bright. Thermo's high share in Finland and the Czech Republic are not considered as representative by the parties, given the very small market size (€[0-500,000] in Finland and € [0-500,000] in the Czech Republic). The unit price for cryostats is in the range of €15,000 to €25,000 and therefore market shares in small markets can radically change from one year to another following the sale of a small number of units.

82. The figures collected in the course of the market investigation indicate that the parties have overestimated the market size. The overall EEA market size, according to the data gathered by the Commission, was €11.6 million in 2005. Consequently the parties' combined market share results higher at [25-35]% (Thermo [0-10]%, Fisher [15-25]%). Leica is clearly the leader at European level, with a market share in excess of 50%. Leica is also the market leader in all major national markets. In smaller markets the computation of precise market shares is made difficult due to the large fluctuations from one year to the other and to the fact that some suppliers group sales by regions (e.g. Scandinavia or Central Europe).
83. As far as closeness of competition is concerned, the market investigation has revealed a similar pattern to the neighbouring market for microtomes. Leica and Fisher are considered the closest competitors due to their long established presence, broad range of products and a reputation for high quality and continuous development. Similarly,

Thermo and the other smaller players in the market do not appear to constitute the most important competitive constraint to the two market leaders, in terms of product range and quality.

84. In view of these elements, and in particular of the competitive constraint posed by Leica to the merging entity, the Commission concludes that the proposed concentration is unlikely to significantly affect effective competition in the market for microtomes in the EEA or in any national market.

#### *COVER SLIPPERS*

85. According to the figures submitted by the parties, the market for cover slippers was worth €[5-10] million EEA-wide in 2005. The combined market share of the parties would be of [5-15]% (Thermo [0-10]%, Fisher [5-15]%). At national level, combined market shares would exceed 25% only in Portugal, with a combined market share of [35-45]% (Thermo [10-20]% and Fisher [20-30]%). Portugal is a very small market (just over €[0-500,000] in 2005) and market shares can fluctuate significantly from one year to the other following the sales of few units. Having regard to the generally limited overlaps between the parties and the feedback received in the course of the market investigation, the Commission concludes that the proposed concentration is not likely to give rise to a significant impediment of effective competition for circulating baths in the EEA level or in any national market.

#### *(iii) Electrochemistry products and consumables*

##### *ION SELECTIVE ELECTRODES*

86. According to the figures submitted by the parties the market for ion selective electrodes was worth €[0-3] million EEA-wide in 2005. The combined market share of the parties would be under [25-35]%, with an extremely small addition of Fisher of less than [0-5]%, for a sales value of € [...]. In no national market would Fisher's addition to Thermo's sales be higher than € [...]. In view of the extremely limited overlaps between the parties and the feedback received in the course of the market investigation, the Commission concludes that the proposed concentration is not likely to give rise to a significant impediment of effective competition for ion selective electrodes in the EEA level or in any national market.

#### VERTICAL ASPECTS

##### *(i) Market characteristics*

87. The market for distribution in the individual national markets is characterised by a high number of players. Whereas the majority of distributors are only active in one Member State, some operate in more than one country, such as Dominique Dutscher (UK and France), Jencons (UK and Ireland), Omnilab (Germany and Netherlands) or Normalab Analis (France and Belgium). Only VWR and Fisher have a truly pan-European presence across the EEA. In certain Member States, direct sales by manufacturer might play an important role, in particular for the technically more sophisticated products.
88. According to the practice in the industry, distributors of laboratory and electrochemistry products usually offer a range of products which they source from different manufacturers. The basket of goods provided by distributors comprises the offering of a very wide range of products (in the order of hundreds or thousands) to

customers as well as some ancillary services, such as logistics, inventory management, marketing, product advisory and if necessary, after-sales services.

89. Virtually all catalogue distributors offer competing brands in their product portfolio. Contrary to what was stated by the notifying party, purchasing practices of distributors differ according to product categories. With regard to less complex products and consumables, distributors seem to apply a multi-sourcing strategy and offer competing brands of the same products. Given that more complex products often require high-level technical assistance and after-sales services, they are less frequently sold by catalogue distributors on a non-exclusive basis, although this modality cannot be entirely ruled out. For complex products, manufacturers more frequently undertake direct distribution or resort to exclusive distribution agreements with non-catalogue, dedicated distributors. These ways of distributing the products are in general the same for all players in the market. However, the importance of direct sales by manufacturer varies from product to product and from country to country.

(ii) Effects of the transaction

90. During the market investigation some respondents indicated that the merged entity might be in a position to foreclose its competitors from the market as a consequence of the transaction. The Commission has carefully analysed the vertical effects of the merger during the market investigation and concluded that the merged entity will lack the ability and incentive to restrict access to input for distributors or to foreclose access of competing manufacturers to customers for the reasons outlined below.

INPUT FORECLOSURE

91. According to the concerns voiced by some market players, the merged entity may decide to streamline its distribution business, by stopping Thermo's supplies to independent distributors and focusing on its newly acquired distributor Fisher. On the other hand the new entity will be in a position to offer attractive package deals to customers, as a consequence of which other distributors unable to match the wide range supplied by the new entity might suffer a competitive disadvantage. It is worth noting, in this respect, that the market players indicating the risk of input foreclosure were in general Thermo's independent distributors whose main concerns were related to the possible termination of their supply contracts post merger. Final customers did not voice concerns with regard to the vertical effects of the transaction.
92. To begin with, in order for input foreclosure to materialise, the merged entity should have the ability of foreclosing competing distributors. To ascertain this aspect, it should be considered whether the merging entity will enjoy significant market power in the manufacture and sales of any product relating to the areas in which it is active. With the exception of centrifuge evaporators, for which the merger will create an horizontal overlap which will be addressed by a commitment (see below), there are a limited number of products in the field of laboratory and electrochemistry equipments and laboratory consumables, where the new entity will have notable market shares. With regard to equipments such as CO<sub>2</sub> incubators, ULT freezers and biological safety cabinets, centrifugal evaporators and ion selective electrodes the merged entity will

hold a market shares in excess of 25% EEA-wide, but never exceeding 45-50%.<sup>11</sup> These figures are a good proxy of market shares at national level, with some exceptions in those national markets where Fisher realises the majority of its revenues.<sup>12</sup> However, even in such countries, in the worst case scenarios market shares only exceptionally exceed 45-50%. Concerning consumables, the merged entity will not have a market share in excess of 25% EEA-wide, with some higher peaks in certain Member States which, generally, do not exceed 30-35%, and in one case approach 45-50%.<sup>13</sup> However, in all of the markets cited above the merging entity will face a number of competitors who are able to offer viable alternatives to its products.<sup>14</sup>

93. Furthermore, irrespective of market shares, in none of the products cited above the merging entity seems to enjoy significant market power vis-à-vis its customers. Nor does the merging entity control an indispensable so to say “must have” product upon which distributors may be dependent. Products in the consumables category are largely commoditised items for which branding is of limited importance. In the case of equipment, the market investigation shows that final customers do not consider any of Thermo’s or Fisher’s products to be essential. This holds true even with regard to the product markets where the merged entity achieves higher market shares. Additionally, it should be borne in mind that the more sophisticated equipments tend to be sold directly by manufacturers or via exclusive distribution agreements. Streamlining the

---

<sup>11</sup> The merged entity will have a market share in excess of 25% EEA-wide with regard to the following markets: biological safety cabinets ([25-35]%), CO2 incubators ([40-50]%), centrifugal evaporators ([30-40]%), ULT freezers ([40-50]%), pipette tips ([20-30]%), ion selective electrodes ([25-35]%).

<sup>12</sup> - In the UK with regard to CO2 incubators ([40-50]%), centrifuges ([25-35]%) and pipettes ([30-40]%), ULT freezers ([30-40]%) and biological safety cabinets ([30-40]%) and ion selective electrodes ([30-40]%)  
 - in the Netherlands with regard to CO2 incubators ([45-55]%) vacuum ovens ([25-35]%) and ion selective electrodes ([20-30]%)  
 - in Germany concerning CO2 incubators ([60-70]%), laboratory ovens ([35-45]%), vacuum ovens ([40-50]%), centrifuges ([20-30]%), ULT freezers ([50-60]%), biological safety cabinets ([45-55]%), autoclaves ([35-45]%) and ion selective electrodes ([30-40]%)  
 - in France concerning CO2 incubators ([25-35]%), laboratory ovens ([35-45]%), vacuum ovens ([35-45]%), centrifuges ([35-45]%), pipettes ([30-40]%), ULT freezers ([50-60]%) biological safety cabinets ([25-35]%) and ion selective electrodes ([30-40]%)  
 - finally in Sweden CO2 incubators ([30-40]%), pipettes ([65-75]%), ULT freezers ([65-75]%) and ion selective electrodes ([20-30]%).

<sup>13</sup> This is the case in France and Sweden concerning pipette tips ([40-50]%). Otherwise, the highest market shares for consumables are realised in the UK concerning pipette tips ([20-30]%) and stackers ([20-30]%), in the Netherlands concerning pipette tips ([25-35]%), in Germany concerning stirrers ([30-40]%).

<sup>14</sup> The most important competing manufacturers are in the market for  
 - biological safety cabinets Steril, Kojair, Clean Air, Faster, Nuaire, ADS, Bioquell, Esco, Bioair, Baker, BDK Telstar Berner Bleymehl, Schulz and Ehret;  
 - CO2 incubators Binder, Sanyo, Nuaire, New Brunswick, Labotect, Memmert and Sheldon;  
 - ULT freezers New Brunswick, Sanyo, Dometic, Angelantoni, Fiocchi, Snijders Scientific, Dairei Froilabo and Nuaire;  
 - ion selective electrodes Methrom, Nova/WTW and Mettler.  
 - centrifuges Beckman, Eppendorf, Hettich, MSE, Hermle and Sigma;  
 - pipettes Eppendorf, Gilson, Biohit, Brand, Socorex, Rainin and HTL;  
 - vacuum ovens Binder, Memmert, MMM, Sheldon, Zirbus, Pink and Selecta;  
 - laboratory ovens Binder, Memmert, MMM, Carbolite, Firlabo, Selecta, Termarks and Falc;  
 - autoclaves Tuttnauer, Systec Fedegari, Hirajama, Sanyo, Slecta, Astell and Melag;  
 - pipette tips Eppendorf, Gilson, Biohit, Brand, Socorex, Treff and Axygen;  
 - stackers Titertek, Tecan, Biotek, Caliper Velocity 11, Perkin Elmer;  
 - stirrers IKA, Heidolph, Integra Biosciences, VWR PL, Schott, Velp, Selecta and Stuart.

sale of these products via the new entity does not change the current competitive environment from the point of view of final customers.

94. Moreover, as indicated by the parties and confirmed by the market investigation, final costumers' primary aspect of choice relates to products they wish to acquire and not to a certain distributor(s). Final customers typically apply either a multi-sourcing strategy or conclude agreements based on tender procedures with a certain distributor for a certain period of time. According to the market investigation, switching to another distributor does not appear to be problematic for customers. Often customers buy complex equipments separately, often via tender procedures, whereas they place regular orders for consumables. This means that, even assuming, contrary to the feedback received by final customers, that the merged entity were in the position to supply on an exclusive basis complex products manufactured by Thermo and deemed as essential by customers, it would not be able to leverage on this position to foreclose distributors for other products in their catalogues. Although bundled offers can occur in the industry, they do not represent a regular practice with regard to sales to final customers. Anticompetitive bundling could be easily defeated by consumers via multiple sourcing. Given the purchase patterns in the industry, even if the merged entity would decide to sell only via its own distribution system, final customers will have the possibility to switch and to be supplied via other distributors with alternative products.
95. Finally, according to the submission of Thermo, as only [0-10]% of its sales in the field of laboratory equipments and consumables are realised through Fisher, it does not seem to be profitable for Thermo to exclude other efficient distributors from its sales.
96. Consequently, given the presence of alternative suppliers and the fact that the new merged entity will not control any indispensable product, it appears that even if the merged entity will decide to sell its products exclusively via its own distribution network, final customers are unlikely to be harmed.

#### CUSTOMER FORECLOSURE

97. As noted above, some of the manufacturers indicated during the market investigation the possibility that the merged entity might decide not to distribute any more competing manufacturers' products, thereby excluding their access to Fisher's distribution network and ultimately to final customers.
98. Fisher realised [85-95]% of its distribution sales in five Member States: UK (with [20-30]% market share), Germany (with [5-15]% market share), France (with [10-20]% market share), the Netherlands (with [15-25]% market share) and Sweden (with [5-15]% market share) in 2005. According to the data provided by the parties, Fisher's market share in distribution of laboratory products does not reach 25% in any of the Member States. Should distribution of laboratory and electrochemistry products be considered together, as proposed by the parties, it would hardly alter the market shares indicated above and Fisher would not exceed 25% market share in any of the Member States. Even taken the most conservative approach, including both sales via distributors to final customers and sales directly by manufacturers, the merged entity would hold a market share in excess to 25% only in the UK ([25-35]%) and in the Netherlands ([25-35]%).<sup>15</sup> Finally, considering the distribution of electrochemistry products separately,

---

<sup>15</sup> Form CO p. 79.

Fisher achieves its highest market share among national markets in France with [10-20]%.<sup>16</sup>

99. Moreover, even in the countries where Fisher realises the majority of its revenues, VWR is by far the largest player, except in the UK, where VWR and Fisher equally hold [20-30]% market share. In each of the national markets Fisher faces strong competition from an important number of national distributors.<sup>17</sup>
100. As a consequence, even if the merged entity were to decide to cease current distribution agreement with competing manufacturers, there will be a significant share of distribution available to these manufacturers. Alternative available distributors will include the leading independent distributor VWR, which has a larger market share than Fisher in almost all European markets and a large number of cross-border and national distributors. Given the number of distributors present on the market, manufacturers excluded from or disadvantaged by Fisher's distribution network could always turn to another distributor to supply their products. Even if switching entails the necessity of certain product-specific training in case of complex products, there does not appear to be a major obstacle for manufacturers to switch to another distributor.
101. Furthermore, Fisher does not appear to be a key gateway to any customer group. As outlined above, whereas the majority of distributors are only active in one Member State, some others operate in more than one Member State and only VWR and Fisher have a presence across the EEA. International presence, however, does not appear to be a significant competitive advantage compared to national players. On the procurement side, manufactures do not provide larger distributors more important discounts and often international distributors carry out procurement at the national level, since their catalogues vary from country to country<sup>18</sup>. Customers consistently reported in the course of the market investigation that they do not see major differences between internationally active distributors and national ones in terms of prices or product offers.
102. As final customers usually do not have exclusive agreements with distributors and their primary aspect of choice relates to products they wish to acquire and not to a certain distributor(s), Fisher is not the exclusive distributor of certain key-customers. According to the notifying party, even those major customers who hold a preferred supplier agreement with Fisher realise a limited share of their procurements via Fisher and continue to multiple source their needs.

---

<sup>16</sup> Fisher's market share in the hypothetical market for market for distribution of electrochemistry products and consumables are [10-20]% in France, [0-10]% in Germany, [0-10]% in the UK and [0-5]% in both, the Netherlands and Sweden in 2005. (Thermo's submission of 9.10.2006 in response to Article 11 letter of the Commission dated of 2.10.2006, Annex 11.)

<sup>17</sup> Fisher' most important competitors are:  
- in the UK VWR ([20-30]%), SLS ([0-10]%), Anachem ([0-10]%), Jencons ([0-10]%), and Genetic Research instrumentation ([0-10]%)  
- in Germany VWR ([15-25]%), TH Geyer ([0-10]%), Omnilab ([0-10]%), Lab Logistics Group ([0-10]%), Roth ([0-10]%) and KMF ([0-10]%)  
- in France VWR ([25-35]%), Dominique Dutscher ([0-10]%) and Elvetec ([0-10]%)  
- in the Netherlands VWR ([25-35]%), Boom ([10-20]%) and Omnilab ([5-15]%)  
- in Sweden VWR ([30-40]%), Bergman Labora ([10-20]%) and Ninolab ([10-20]%).

<sup>18</sup> This is for example the case for Fisher distribution.

103. It is therefore clear from the market investigation that the merged entity would not have the ability to foreclose manufacturers by denying them access to its distribution channel.
104. Finally, Fisher appears to lack the economic incentive to exclude other manufacturers as its suppliers. Currently, Fisher realises [15-25]% of its revenues from distributing its own products. Should the commercial strategy of Fisher change, it would lose an important part of its profit realised by the distribution of other manufacturer's product. Indeed, the internal documents of Fisher relating to the transaction do not foresee such a strategy. Indeed, the acquisition history of Fisher indicates that Fisher's business model is based on separation between production and distribution.
105. Consequently, given in particular the lack of a strong market position, the merged entity is unlikely to have the ability and incentive to foreclose manufacturers' access to a significant customer base.

*(iii) Conclusion on vertical effects*

106. Based on the elements outlined above, the Commission concludes that the transaction is unlikely to significantly impede effective competition due to vertical effects.

**VII. MODIFICATION OF THE PROPOSED CONCENTRATION**

107. In order to remove the serious doubts resulting from the horizontal overlaps in the market for centrifugal evaporators, the parties formally submitted commitments to the Commission on 17 October 2006. Following the market test, the notifying party submitted a final commitment package taking account of the Commission's comments. The detailed text of these commitments is annexed to this decision. The full text of the annexed commitments forms an integral part of this decision.
108. Thermo therefore proposed to divest the entire overlap between the merging parties in the production and sales of centrifugal evaporators, including centrifugal evaporators used for parallel synthesis, by divesting all of Fisher's assets active in this area: ("the Divestment Business"). The Divestment Business consists of two legal entities, including all necessary assets to ensure that the business is viable and can be operated as a stand alone entity:
- Genevac Limited, active in the design and manufacture of centrifugal evaporators and responsible for their sale, either directly or via distributors, in all territories outside North America;
  - Genevac Inc, active as an exclusive distributor of Genevac products in North America.
109. As the proposed divestitures will completely eliminate the overlap between the parties in the production and sales of centrifugal evaporators, the Commission considers that the commitments are sufficient to eliminate all serious doubts as to the compatibility of the transaction with the common market. The commitments were supported by third parties in their replies to the Commission's market test. Moreover, the commitments proposed by the parties are also meant to address the competition concerns identified by US FTC in the US territory. The inclusion of Genevac Inc. in the Divestment Business will ensure Genevac's continuing access to the US, which is the largest and most important market for centrifugal evaporators.

110. In order to ensure that Thermo complies with these commitments, the Commission attaches conditions and obligations to this decision. The commitments set out in Section B and Schedule of the commitments annexed to the present decision constitute conditions, since only by fulfilling them may the structural change on the relevant markets be achieved so as to eliminate the serious doubts identified by the Commission. The other commitments constitute obligations, since they concern the implementing steps necessary to achieve the structural change intended to eliminate the serious doubts identified by the Commission.

## **VIII. CONCLUSION**

111. 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, subject to full compliance with: (i) the conditions in Section B and Schedule of the commitments annexed to the present decision; and (ii) the obligations in the other Sections of the said commitments and in Schedule 2. This decision is adopted in application of Articles 6(1)(b) and 6(2) of Council Regulation (EC) No 139/2004.

For the Commission  
signed  
Neelie KROES  
Member of the Commission



## CASE COMP/M.4242 – THERMO ELECTRON/FISHER SCIENTIFIC

### COMMITMENTS TO THE EUROPEAN COMMISSION

#### *Non-confidential Version*

Pursuant to Article 6(2), of Council Regulation (EC) No. 139/2004 as amended (the “**Merger Regulation**”), Thermo Electron (the “**Notifying Party**”) hereby provides the following Commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the acquisition of Fisher Scientific by the Notifying Party (the “**Notified Concentration**”) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “**Decision**”).

These Commitments are given by the Notifying Party without prejudice to its position that the Notified Concentration does not, notwithstanding any serious doubts that the Commission may have, significantly impede effective competition within the common market or a substantial part of it and is therefore compatible with the common market and the functioning of the EEA Agreement.

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No. 4064/89 and under Commission Regulation (EC) No. 447/98.

#### **Section A – Definitions**

For the purpose of the Commitments, the following terms shall have the following meaning:

**Affiliated Undertakings:** undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No. 4064/89.

**Closing:** the transfer of the legal title of the Divestment Businesses to the Purchaser.

**Divestment Business:** the business as defined in Section B and the attached Schedule that the Notifying Party commits to divest.

**Divestiture Trustee:** one or more natural or legal person(s), independent from the Notifying Party, who is(are) approved by the Commission and appointed by the Notifying Party and who has(have) received from the Notifying Party the Mandate to sell the Divestment Businesses to one or several Purchasers at no minimum price.

**Effective Date:** the date of the adoption of the Decision by the European Commission, unless the acquisition of control of Fisher by the Notifying Party is completed after the

Decision, in which case the effective date will be the date of completion of the Notified Concentration.

**First Divestiture Period:** a period of *[Confidential]* from the Effective Date.

**Fisher:** The company Fisher Scientific International Inc., incorporated in the United States of America, with its registered office at Liberty Lane, Hampton, NH 03842, USA.

**Hold Separate Manager:** the person appointed by the Notifying Party for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee, who, as at the date of these Commitments, will be *[Confidential]*.

**Key Personnel:** all personnel necessary to maintain the viability and competitiveness of the Divestment Businesses, as listed in the Schedule.

**Monitoring Trustee:** one or more natural or legal person(s), independent from the Parties, who is(are) approved by the Commission and appointed by the Notifying Party, and who has(have) the duty to monitor the Notifying Party's compliance with the conditions and obligations attached to the Decision.

**Notifying Party:** the company Thermo Electron Corporation, incorporated in the United States of America, with its registered office at 81 Wyman Street, P.O. Box 9046, Waltham, MA 02454-9046, USA.

**Parties:** the Notifying Party and Fisher.

**Purchaser:** the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

**Trustee(s):** the Monitoring Trustee and the Divestiture Trustee.

**Trustee Divestiture Period:** the period of *[Confidential]* from the end of the First Divestiture Period.

## **Section B – The Divestment Businesses**

### Commitment to divest

1. In order to restore effective competition, the Notifying Party commits to divest, or procure the divestiture of the Divestment Businesses by the end of the Trustee Divestiture Period as a going concern to a purchaser on terms of sale approved by the Commission in accordance with the procedure described in paragraph 15. To carry out the divestiture, the Notifying Party commits to find a purchaser and to enter into a final binding sale and purchase agreements for the sale of the Divestment Business within the First Divestiture Period. If the Notifying Party has not entered into such agreements at the end of the First Divestiture Period, the Notifying Party shall grant the Divestiture Trustee a mandate to sell the Divestment Businesses in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.

2. The Notifying Party shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, the Notifying Party has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 15 and if the closing of the sale of the Divestment Businesses takes place within a period not exceeding *[Confidential]* after the approval of the purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of *[Confidential]* after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Businesses is no longer necessary to render the proposed concentration compatible with the Common Market.

#### Structure and definition of the Divestment Businesses

4. The Divestment Business consists of all of the Notifying Party's right, title and interest in Genevac Limited and Genevac Inc. (together "**Genevac**") acquired by means of the acquisition of control of Fisher by the Notifying Party, including but not limited to all of Genevac's issued share capital, tangible and intangible assets, properties, business and goodwill, provided, however, that cash receivables or other non-unique assets may be excluded from the sale of the Divestment Business at the request of the Purchaser and subject to the prior approval of the Commission.

#### **Section C – Related commitments**

5. From the Effective Date until Closing, the Parties shall preserve the economic viability, marketability and competitiveness of the Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses. In particular the Parties undertake:
  - (a) not to carry out any act upon their own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Businesses;
  - (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
  - (c) offer incentives to Key Personnel to remain with the Divestment Businesses, as set out in the Schedule.

#### Hold-separate obligations of Parties

6. The Parties commit from the Effective Date until Closing to keep the Divestment Business separate from the businesses the Notifying Party is retaining and to ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any business retained and vice versa. The Parties shall also ensure that the personnel currently employed by the Divestment Business do not report to any individual outside the Divestment Business.
7. Until Closing, the Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. The Notifying Party shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.
8. Furthermore, following consultation with the Hold Separate Trustee appointed for the purposes of the Decision and Order of the US Federal Trade Commission relating to the Notifying Party's acquisition of Fisher (the "**US Consent Orders**"), the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of Fisher.

#### Ring-fencing

9. The Parties shall implement all necessary measures to ensure that they do not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Businesses in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Parties may obtain information relating to the Divestment Businesses which is reasonably necessary for the divestiture of the Divestment Business or to comply with obligations to the US Federal Trade Commission in relation to the Divestment Business, or to ensure compliance with legal and regulatory functions, or to perform required auditing functions, or to provide accounting, information technology and credit underwriting services, or to provide legal services associated with actual or potential litigation and transactions, or to monitor and ensure compliance with financial, tax reporting, governmental environmental, health, and safety requirements or for inclusion within the Notifying Party's periodic financial reports that Genevac may provide the Notifying Party but only to the extent that any confidential information is aggregated so that data as to individual customers are not disclosed.

#### Non-solicitation clause

10. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of *[Confidential]* after Closing.

#### Due Diligence

11. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Notifying Party shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
- (a) provide to potential purchasers sufficient information as regards the Divestment Businesses; and
  - (b) provide to potential purchasers sufficient information relating to personnel currently employed by the Divestment Business and allow them reasonable access to the Key Personnel.

#### Reporting

12. The Notifying Party shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
13. The Notifying Party shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission no later than the date upon which such memorandum is sent to potential purchasers.

#### **Section D – The Purchaser**

14. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
- (a) be independent of and have no material connection with the Parties, and, for the avoidance of doubt, a relationship with Fisher in its capacity as a distributor shall not be deemed to create a connection between the Parties and a Purchaser for the purpose of this clause;
  - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
  - (c) neither be likely to create, in the light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the “**Purchaser Requirements**”).

15. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When the Notifying Party has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission shall use its reasonable efforts to reach this decision in sufficient time to allow the Notifying Party to comply with its obligations to the US Federal Trade Commission with respect to the Divestment Business. The Commission may approve the sale of the Divestment Business without certain of the assets currently owned by the Divestment Business or parts of the personnel currently employed by the Divestment Business, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

## **Section E – Trustee**

### I Appointment Procedure

16. The Notifying Party shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If the Notifying Party has not entered into a binding sale and purchase agreement for the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Notifying Party at that time or thereafter, the Notifying Party shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
17. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Businesses, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

### *Proposal by the Notifying Party*

18. No later than one week after the Effective Date, the Notifying Party shall submit a list of one or more persons whom the Notifying Party proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, the Notifying Party shall submit a list of one or more persons whom the Notifying Party proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain

sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 17 and shall include:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

#### *Approval or rejection by the Commission*

19. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Notifying Party shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Notifying Party shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

#### *New proposal by the Notifying Party*

20. If all the proposed Trustees are rejected, the Notifying Party shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 16 and 19.

#### *Trustee nominated by the Commission*

21. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Notifying Party shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

## II Functions of the Trustee

22. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Notifying Party, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

#### *Duties and obligations of the Monitoring Trustee*

23. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;
- (ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Notifying Party with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
  - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, and the keeping separate of the Divestment Businesses from the businesses retained by the Parties, in accordance with paragraphs 5 and 6 of the Commitments;
  - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;
  - (c) (i) in consultation with the Notifying Party, determine all necessary measures to ensure that the Parties do not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business (other than such aggregated, non-customer specific financial information as may be included in periodic financial reports provided by the Divestment Business to the Notifying Party), in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business; and (ii) decide whether such information may be disclosed to the Notifying Party as the disclosure is reasonably necessary to allow the Notifying Party to carry out the divestiture, or to comply with obligations to the US Federal Trade Commission in relation to the Divestment Business, or to ensure compliance with legal and regulatory functions, or to perform required auditing functions, or to provide accounting, information technology and credit underwriting services, or to provide legal services associated with actual or potential litigation and transactions, or to monitor and ensure compliance with financial, tax reporting, governmental environmental, health, and safety requirements;
  - (d) monitor the splitting of assets and the allocation of personnel currently employed by the Divestment Business between the Divestment Business and the Notifying Party or Affiliated Undertakings;
- (iii) actively consult and co-operate on an on-going basis with such Trustees as may be appointed for the purposes of the US Consent Orders so as to avoid conflict or inconsistency in the implementation of the US Consent Orders and these Commitments;



- (iv) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (v) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (vi) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Business and personnel currently employed by the Divestment Business in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Key Personnel;
- (vii) provide to the Commission, sending the Notifying Party a non-confidential copy at the same time, a written report within 15 days after the end of every month; the report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the Businesses are held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers; in addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending the Notifying Party a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Party is failing to comply with these Commitments; and
- (viii) within one week after receipt of the documented proposal referred to in paragraph 15, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without certain of the assets currently owned by the Divestment Business or not all of the personnel currently employed by the Divestment Business affects the viability of the Divestment Businesses after the sale, taking account of the proposed purchaser.

*Duties and obligations of the Divestiture Trustee*

24. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at the best possible price and other terms, with no minimum price, the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 15. The Divestiture Trustee shall include in the

sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Notifying Party, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

25. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Parties.

### III Duties and obligations of the Parties

26. The Parties shall provide and shall cause their advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to such of the Parties or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary (other than legally privileged information) as the Trustee may reasonably require for fulfilling its duties under the Commitments and the Parties and the Divestment Business shall provide the Trustee upon request with copies of any such document (other than any legally privileged document). The Parties and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information reasonably necessary for the performance of its tasks.
27. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Parties shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Notifying Party shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
28. The Notifying Party shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, the Notifying Party shall cause the documents required for effecting the sale and the Closing to be duly executed.

29. The Notifying Party shall indemnify the Trustee and its employees and agents (each an “**Indemnified Party**”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Party for any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the faith of the Trustee, its employees, agents or advisors.
30. At the expense of the Notifying Party, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Party’s approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Notifying Party refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Party. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 29 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Notifying Party during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale

#### IV Replacement, discharge and reappointment of the Trustee

31. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Trustee, require the Notifying Party to replace the Trustee; or
  - (b) the Notifying Party, with the prior approval of the Commission, may replace the Trustee.
32. If the Trustee is removed according to paragraph 31, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16-21.
33. Beside the removal according to paragraph 31, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

#### **Section F - The Review Clause**

34. The Commission may, where appropriate, in response to a request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee:

- (i) grant an extension of the time periods foreseen in the Commitments; or
- (ii) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where the Notifying Party seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall the Notifying Party be entitled to request an extension within the last month of any period.

Signed:

Duly authorised for and on behalf of the Notifying Party

Brussels, 30 October 2006

## SCHEDULE

1. The Divestment Business consists of the legal entities Genevac Limited and Genevac Inc., and their joint ventures, subsidiaries, divisions, groups, and affiliates controlled by either Genevac Limited or Genevac Inc. The ultimate parent company of Genevac Inc and Genevac Limited is Fisher Scientific International Inc.

Genevac Limited is a company incorporated in the United Kingdom. Corporate details are set out below:

- (a) *Registered office:* 6 The Sovereign Centre, Farthing Road, Ipswich, Suffolk IP1 5AP, United Kingdom.
- (b) *Company directors and officers:* **[Confidential]**
- (c) *Issued share capital:* 1,100,000 ordinary shares of £1 each and 400 “A” ordinary shares of 6.25p each, as at 31 December 2004.
- (d) *Shareholders:* Erie UK Limited owns 100% of the share capital of Genevac Limited. Erie UK Limited is ultimately controlled by Fisher Scientific International Inc.

Genevac Inc. is a company incorporated under the laws of the State of New York. Corporate details are set out below:

- (a) *Registered office:* 707 Executive Bouvelard, Suite D, Valley Cottage, New York 10989, USA.
- (b) *Company directors and officers:* **[Confidential]**
- (c) *Issued share capital:* 100 shares
- (d) *Shareholders:* Robbins Scientific Corporation owns 100% of the share capital of Genevac Inc. Robbins Scientific Corporation is ultimately controlled by Fisher Scientific International Inc.

The principal activity of Genevac Limited and Genevac Inc. is the sale of centrifugal evaporators, which use a combination of heat, vacuum and centrifugal force to remove solvents from laboratory samples evaporating off the solvents while preserving and drying the samples for storage, further analysis, characterisation or experimentation. Genevac Inc acts as an exclusive distributor of Genevac products in North America. Genevac Limited is responsible for the design and manufacture of these products and their sale, either directly or via distributors, in all territories outside North America.

2. Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:
  - (a) the following main tangible assets:

all manufacturing lines, equipment and other tooling located in Genevac Limited's production plant in Ipswich, UK, and the existing inventory of finished products held as at Closing in Genevac Limited and Genevac Inc.'s offices in Ipswich UK and in Valley Cottage NY;

(b) the following main intangible assets:

the assignment of the brands Genevac and miVac and of the registered trademarks Genevac and the Genevac logo, and CoolHeat and the CoolHeat logo; and the assignment of all other intellectual property rights owned by Genevac and used in the Divestment Business;

(c) the following main licences, permits and authorisations:

to the extent legally transferable, all governmental licenses, permits, authorisations and registrations relating to the Divestment Business;

(d) the following main contracts, agreements, leases, commitments and understandings:

to the extent legally transferable, all contracts, leases, commitments and customer orders; all customer, credit and other records of the Divestment Business;

(e) the following customer, credit and other records:

all records relating to Genevac Limited and Genevac Inc. customers, credits and other business activities;

(f) the following personnel:

all personnel currently employed by Genevac Limited and Genevac Inc.;

(g) the following Key Personnel, who shall be offered the retention bonuses listed:

***[Confidential]***

3. The Divestment Business shall not include:

cash receivables or other non-unique assets may be excluded from the sale of the Divestment Business at the request of the Purchaser and subject to the prior approval of the Commission.