EN

Case No COMP/M.4321 - SIEMENS / BAYER DIAGNOSTICS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 31/10/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31/10/2006

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

Subject: Case No COMP/M.4321 Siemens/Bayer Diagnostics
Notification of 26.09.2006 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 26.09.2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the German undertaking Siemens AG ("**Siemens**", Germany) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of **Bayer Diagnostics**, the Diagnostic division of Bayer Healthcare, a business unit of Bayer AG ("Bayer", Germany) by way of combined purchase of shares and assets.

2. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

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

I. THE PARTIES

3. Siemens is a German stock corporation and is the ultimate parent of the Siemens group of companies. It is active in various manufacturing, technology and services business activities, including medical systems. Within the latter, Siemens is notably active in the in-vitro diagnostic ("**IVD**") sector pursuant to the acquisition of Diagnostic Products Corporation ("**DPC**") on 28 July 2006.

4. Bayer Diagnostics develops, manufactures and markets in-vitro diagnostic systems for hospitals and medical laboratories.

II. THE OPERATION

5. On 2 July 2006, Bayer and Siemens ("the **partie**s") concluded a Share and Asset Purchase Agreement, pursuant to which the transaction is structured as a combined share and asset purchase. The business of Bayer Diagnostics is carried out by various direct and indirect subsidiaries. Siemens will acquire those subsidiaries which are exclusively active in the IVD area by way of an acquisition of shares. With regard to Bayer subsidiaries not only active in the IVD area, Siemens will either acquire their IVD assets, or acquire their shares (non IVD assets will be transferred back to Bayer in the latter case).

6. The purpose of the transaction for Siemens is to invest in a company with complementary activities to its existing investments in the health and medical sector, in order to create a larger, diversified medical products company. Most synergies will be achieved between Siemens/DPC and Bayer Diagnostics, both active in the immunochemistry business, a sub-segment of IVD business. In addition, Siemens also expects cross-fertilization between its new in-vitro business and long-established in-vivo diagnostic activities.

III. CONCENTRATION

7. Following the transaction, Siemens will acquire sole control over Bayer Diagnostics and the transaction constitutes a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than € 5 billion[2] (in October 2004–September 2005, Siemens had an approximate turnover of € 75 billion and in January 2005-December 2005 Bayer Diagnostics had a turnover of € 1.433 billion). Both companies have a Community-wide turnover in excess of € 250 million (in October 2004–September 2005, Siemens had an approximate Community turnover of € […] billion and in January 2005-December 2005 Bayer Diagnostics had a Community turnover of € […] million), but they do not achieve more than two-third of their aggregate

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[2] Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C 66, 2.3.1998, p 25).

Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

9. The proposed transaction relates to the manufacture and sale of in-vitro diagnostics equipment and reagents[3]. Both parties offer products and services for IVD analysis[4].

RELEVANT PRODUCT MARKET

Description of the products involved

10. IVD relates to diagnostic tests performed outside the body on samples (e.g. blood, urine or tissues) taken from the patient. The European Diagnostic Manufacturers Association ("**EDMA**") currently classifies IVD tests into six main categories: clinical chemistry, immunochemistry, haematology/histology, microbiology culture, infectious immunology and genetic testing. Siemens/DPC is active in the immunochemistry segment, whereas Bayer Diagnostics is active in immunochemistry, plus chemical chemistry, and haematology. Both parties also have a very limited activity in the infectious immunology segment.. The main overlap between the parties is therefore in the immunochemistry segment, with a further small overlap in infectious immunology. This decision will focus only on these categories, while other categories will be treated only insofar they are relevant for the definition of the relevant market(s) within immunochemistry.

11. In order to carry out immunochemistry tests (also called immunoassays), both dedicated equipment as well as specific reagents are needed. Immunochemistry tests use the chemical reaction of antibodies and antigens to identify substances (e.g. enzymes, drugs, hormones) found in relatively small concentrations in the samples tested, in order to diagnose a variety of medical problems (cancer, HIV, thyroid problems, etc…). Providers of IVD tests mainly propose proprietary solutions, including both equipment and reagents, where test results can only be guaranteed when using equipment and reagents from the same provider.

12. Within immunochemistry, EDMA proposes a classification based on a number of thematic panels of tests, which include e.g. cardiac markers, tumor markers (cancer), TDM – therapeutic drug monitoring, DOA – drug of abuse, thyroid, fertility, anaemia, metabolic functions and allergy. This classification is widely used at European level and the firms active on the immunochemistry market report their sales under this classification.

13. Within each thematic panel, a number of different tests (assays) can be performed in order to detect different pathogens. EDMA also provides a classification at the level of single assays, the total number of which is around 450 according to the parties. Some assays are offered by most or all the major immunochemistry

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3 Reagents are consumable substances used in conjunction with the equipment to perform IVD tests.

4 This sector has already been examined in previous cases (IV/M.*950 Hoffmann La Roche/Boehringer Mannheim*, case IV/M.954 *Bain/Hoechst – Dade Behring*, and case IV/M.1325 *Bayer/Chiron*), without however reaching a definite conclusion regarding product market definitions.

players, while others (usually less often used) may be offered by one or few suppliers only.

Relevant product market definition proposed by the parties

14. The parties submit that the relevant product market is a system market, comprising at least all (immunochemistry) systems, including both equipment and reagents. Further segmentation at the level of thematic panels or single assays is, according to the parties, not justified by the competitive conditions in the market. In particular, the parties submit that customers usually buy equipment and reagents as part of a package from the same supplier. Indeed, more and more customers choose a leasing/renting solution for the equipment together with a ongoing contract for the proprietary reagents to be used with the equipment in order to limit capital costs. Furthermore, in choosing the equipment, customers do not look only at the availability of specific assays, but also at more systemic dimensions such as the assay menu available, the equipment throughput capacity, the quality of post sales assistance etc. All mainstream suppliers are able to offer all the most common assays in their systems' menus. Differences between systems at the level of assays availability can however be found regarding the quality and the breadth of the menu offered (e.g. specific, less used assays in addition to the most common ones).

15. The parties include in the market for immunochemistry systems the equipment and reagents used to perform tests that are classified under the category of infectious immunology by EDMA. The infectious immunology category includes tests performed in connection with diseases caused by bacterial or viral infection. According to the parties, most of these tests are effectively immunochemistry tests, while a smaller part is based on a different testing technology (molecular testing) in which Siemens/DPC is not active.

16. Furthermore, the parties underline an ongoing trend towards a gradual integration between clinical chemistry and immunochemistry systems, which could result in an overall single relevant market over time. Clinical chemistry covers biochemical tests that measure the level of body fluids and compare them to reference values. According to the parties, some tests classified in the immunochemistry category by EDMA ('homogenous immunoassays') can also be performed on clinical chemistry equipment. Furthermore, customers increasingly demand automated systems which allow carrying out both clinical chemistry and immunochemistry tests. Suppliers offer such integrated solutions, normally consisting on dedicated equipment linked by one feeding mechanism.

Previous Commission decisions

17. The Commission has dealt with the IVD markets in a number of cases: IV/M.1325 Bayer/Chiron Diagnostics of 17 November 1998, IV/M.954 - Bain/Hoechst - Dade Behring of 2 September 1997, IV/M. 950 Hoffman - La Roche / Boehringer Mannheim of 4 February 1998, and IV/M.457 - Roche/Syntex of 20 June 1994. The market investigations in these cases indicated that the relevant product markets had to be defined at a narrower level than immunochemistry systems, and most likely at the level of thematic panels. The exact product market definition was however left open on whether the thematic panels of EDMA would constitute separate markets or whether some of them could be grouped together (e.g. DOA and TDM).

18. The parties argue that the past Commission decisions do not reflect the current competitive situation, as significant changes in the offer of more integrated immunochemistry systems have occurred in the past few years.

Results of the market investigation

19. The market investigation confirms that the purchasing decision of most laboratories generally concerns the package "equipment, reagents & after sales service". This is the case in particular for the purchase of high capacity equipment which is used as "workhorse machines" to carry out a large number of commonly performed tests. In addition, the market investigation has confirmed that the large majority of systems are proprietary: the reagents provided by one diagnostic company are used only on the equipment of this same company. A few exceptions might be observed which do not change the nature of the link between the equipment and the reagents.

20. The market investigation underlined that providing a large spectrum of assays is a clear competitive advantage. The laboratories generally do not take the decision to purchase a system to only carry out assays of a specific panel, or to carry out specific assays. The purchasing decision is based on a global analysis of cost and assay availability. However, the quality of assays might vary from one provider to another one, with the result that the laboratories may decide to buy more specific assays from one provider. This is possible and part of good-management practices as most laboratories are equipped with equipment from several suppliers.

21. At the same time, the market investigation has clearly indicated that availability of the desired assay menu is a key factor in the laboratories' purchasing decision for the whole system: a given system can be discarded simply because it fails to offer a particular thematic panel of assays, or a particular (commonly used) assay that is considered important by the purchaser.

22. The indication that competition takes places also at the level of thematic panels or specific assays is confirmed by significant fluctuations between the suppliers' market shares for different panels. This fact signifies that laboratories (which often utilise in parallel immunochemistry systems from different suppliers) have the possibility to select the best assays (in terms of price, quality, specific needs) to perform with each proprietary piece of equipment they have available[5].

23. The competitive assessment must therefore be based on both dimensions: at the level of systems and at the level of thematic panels or even at the level of specific assays, if these prove to be crucial in the purchasing decisions of laboratories. As it will be shown in the section on the competitive assessment, the proposed transaction will not give rise to competition concerns under any alternative possible definition. Therefore, it is not necessary in this case to determine whether

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[5] In their submission, the parties claim that differences in market shares between thematic panels in a given geographic market can be explained by variations at the level of laboratory (size, balance of routine versus less common assays performed, specific preferences etc.). However, such variability at the level of laboratory should disappear or be significantly reduced when aggregating data at national level, especially in medium and large countries where there are hundreds or thousands of laboratories. If significant variation in the market shares for specific panels remains at such an aggregated level, it is likely to reflect some other factor than laboratories' preferences.

the relevant product markets should be defined at the level of immunochemistry systems (with availability of thematic panels and specific assays as an important dimension to determine closeness of competition) or at a narrower level.

24. As regards the inclusion of infectious immunology tests within immunochemistry, the market investigation provided a mixed picture, with roughly half of the respondents stating that infectious immunochemistry should indeed be included in the immunochemistry segment, and the other half stating the contrary. Similarly, approximately half of the laboratories responded that they perform the infectious immunoassays on the same equipment as immunoassays, and half responded the contrary. In many large hospitals, infectious immunology is carried out in a different department (for example in the microbiology department or in dedicated immunology laboratories) than immunochemistry. This means that, even if the same equipment could be used in theory for the two categories of tests, this does not happen in practice. In these cases, purchasing decisions of the different departments are driven by different factors and do not necessarily coincide. For a sizeable part of the demand, therefore, immunochemistry and infectious immunology cannot be considered as part of the same market.

25. Ultimately, the precise delimitation of the relevant markets between immunochemistry and infectious immunology can again be left open in this case given that, irrespective of the segmentation being retained, the transaction will not give rise to competition concerns.

26. Finally, the market investigation has confirmed that there exists a trend towards an integration of the clinical chemistry and immunochemistry segments. The majority of laboratories consider the two markets to be closely related, notably because equipment reagent providers are generally the same for the two categories. However, the very large majority of laboratories continue to operate independently immunochemistry systems and clinical chemistry systems, and do not link the purchase of immunochemistry systems to clinical chemistry systems. For the purposes of the definition of the relevant product market, the market investigation has clearly indicated that clinical chemistry systems and immunochemistry systems cannot be grouped together. This decision will therefore deal only with the immunochemistry and infectious immunology markets. In any event, no competition concerns would rise if clinical chemistry and immunochemistry were to be considered as part of the same market, as Siemens/DPC is not active in clinical chemistry.

RELEVANT GEOGRAPHIC MARKET

27. The parties takes the view that the relevant geographic market for all the products mentioned above is increasingly EEA-wide in scope. According to the parties, significant changes are taking place in these markets, which warrant a reconsideration of the national geographic scope of the market enshrined in previous decisions[6]: notably, the harmonisation of the European standards on design and manufacture of IVD devices and an increased trend for customers to purchase through European

6 See decisions IV/M.1325 Bayer/Chiron Diagnostics of 17 November 1998, IV/M.954 - Bain/Hoechst - Dade Behring of 2 September 1997, IV/M. 950 Hoffman - La Roche / Boehringer Mannheim of 4 February 1998, and IV/M.457 - Roche/Syntex of 20 June 1994.

tenders. In addition, all major providers of IVD tests are active worldwide and supply the same equipment and reagents throughout the EEA.

28. The market investigation clearly indicates that, for all the products mentioned above, the relevant geographic dimension of the markets is national. Indeed, the geographic extent of the market is to be determined primarily with the demand side considerations. The market investigation confirms that the large majority of laboratories purchase their equipment and tests to local sales offices, principally for the need of rapid delivery and reactive support services. A breakdown in the performance of the equipment delays the realisation of IVD tests, and is not generally acceptable for more than a few hours. Only very few respondents to the market inquiry report that they purchase part of their supplies abroad. Even in these cases, purchases are limited to small quantities (e.g. for specific assays not available in their own country) and mostly occur in border areas with purchases from neighbouring countries.

29. Customers also reported that, even when they purchase through international tenders, bidders are as a rule the national representatives or the exclusive distributors of the suppliers. In fact, all international manufacturers operate through national sales forces, distribution and support systems.

30. Not surprisingly, most customers have only limited awareness of differences in price levels between national markets, as such differences have no bearing on their purchasing activity. Indeed, even when customers have inquired on prices abroad, this has not lead to a switch of orders to lower cost locations.

31. Based on these considerations, the Commission concludes that the relevant geographic market for the products considered in this decision is national.

COMPETITIVE ASSESSMENT

General remarks

32. Coherently with the geographical market definition adopted, the market investigation was conducted at national level in all countries where the combination of Siemens/DPC and Bayer Diagnostic would result in significant overlaps at the level of immunochemistry systems or assay panels. The customers contacted where selected in order to have a representative mix of large and small laboratories, hospitals and independent laboratories, public and private institutions. The feedback from customers to the market investigation was largely consistent across these categories and across countries.

33. The responses of customers and competitors to the Commission's market investigation have not indicated that competition problems will arise as a consequence of the proposed concentration. The concentration will contribute to create a strong actor on the IVD markets, in position to compete with the current leaders. Many respondents have indicated that there are a fairly large number of competitive suppliers of integrated immunochemistry systems, and notably Abbott, Roche, Dade Behring, Beckman Coulter and Ortho Clinical Diagnostics (OCD). Other market players include more specialised suppliers who have a strong position for specific thematic panels or assays or have a strong focus on particular national markets.

34. Despite the installation of proprietary equipments in the laboratories, the immunoassay market is still characterised by a certain degree of fluidity in all EEA national markets:

(i) Most laboratories have several immunochemistry equipments and suppliers, therefore allowing, in a relatively easy way, switching from one to the other. Laboratories generally select the best immunoassays from one supplier and perform these assays on the proprietary equipment. However, in case of increase in assays' price, switching to another provider is technically simple. When several equipments are available, programming the existing equipment to perform additional tests, previously performed on another machine, is relatively inexpensive and immediate. . As equipment accounts for approximately only 10% of total costs and reagents for 90%, an increase in price of specific reagents would likely lead to switching. When only one equipment is available, which is not frequent, the switch will preferably happen when equipment reaches its end life, generally after a 5-7 year period. Switching implies a cost as the customer needs to train staff on the system, but such costs if often borne by the supplier[7]. Additionally, small laboratories with only one piece of equipment always outsource part of their tests to larger or more specialised units. An increase in the price of specific assays from their single provider would likely lead them to increase outsourcing.

(ii) Most laboratories report that they do not expect to face problems of assay availability once the concentration is effective. Several laboratories report that the parties provide a limited number of unique assays, which are however not essential for the laboratories (not commonly used). More importantly, customers report that the combination of Bayer Diagnostic and Siemens/DPC will not limit their choice of assays, considering that similar assays are available from competitors. The large majority of customers do not think that the merged entity will gain market power for one or several specific assays and do not identify a risk of shortening assay supply. This confirms the information provided by the parties, indicating that, while there are some specific assays (normally not commonly used) that are currently supplied by Siemens/DPC or Bayer Diagnostic only, there are no relevant examples of assays that are currently supplied only by the two companies and no other market players.

(iii) A minority of respondents indicate that they fear an increase in price and a reduction in the choice of systems or assays. A significantly larger number of responses, both from large and small laboratories, indicate that the competitive situation in the market is such that the proposed situation will not give the combined entity the market power to increase prices. Some respondents also report that they expect increased competition from the creation of a third strong player next to Roche and Abbott and from the entry of Siemens in the IVD arena.

Competitive position – market shares and closeness of competition

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7 Indeed, providers generally propose free training and free reagents for a period of several months in order to facilitate switching.

35. The market shares provided by the parties have been broadly confirmed by the market investigation, and will therefore be reported in the following. Whenever there is a significant discrepancy with the figures resulting from the market investigation, this is explicitly reported in the text[8].

36. The market for immunochemistry systems (including both immunochemistry and the part of infectious immunology that can be performed on immunochemistry systems) amounted, according to the data provided by the parties, to around € [2.5-3.5] billion in 2005. The two main players are Roche and Abbott with a market share in excess of 20% at the EEA-level. The combined entity would become the third market player with a market share of [10-20].

Abbott	[20-30] **%**
Roche	[15-25] **%**
Siemens/DPC + Bayer Diagnostics	[10-20] **%**
Dade Behring	[5-15] **%**
OCD	[0-10] **%**
Beckman Coulter	[0-10] **%**
Others	[15-25] **%**

EEA market share – Immunochemistry (incl. infectious) equipment and reagents - parties estimates

37. At national level, 12 markets out of 28 EEA countries are affected (Belgium, Czech Republic, Denmark, Estonia, Ireland, Italy, Lithuania, Netherlands, Norway, Poland, Portugal and United Kingdom). The merged entity will be leader of the following markets with a share higher than 25%: Estonia ([45-55]% of a € [0-5] million market, with Siemens/DPC [40-50]% and Bayer Diagnostic [0-5]%), Lithuania ([30-40]% of a € [0-5] million market, with Siemens/DPC [20-30]% and Bayer Diagnostic [0-10]%)[9], Denmark ([25-35]% of a € [20-30] million market, with Siemens/DPC [0-10]% and Bayer Diagnostic [20-30]%), Czech Republic ([20-30]% of a € [50-60] million market, with Siemens/DPC [15-25]% and Bayer Diagnostic [5-15]%), Norway ([20-30]% of a € [25-35] million market, with Siemens/DPC [10-20]% and Bayer Diagnostic [10-20]), and Ireland ([20-30]% - of a € [10-20] million market, with Siemens/DPC [10-20]% and Bayer Diagnostic [10-20]%). On the other affected markets the merged entity will be in second or third position. On the largest EEA markets, the merged entity is notably never in a leading position.

38. If immunochemistry and infectious immunology were considered to belong to separate markets, no competition concerns would possibly arise in the infectious immunology market, given that the merged entity's combined market share[10]

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8 Significant discrepancies between the parties' estimates and the result of the market investigation occurred for some specific thematic panels and countries in which the parties are not active or have a very small presence. To the extent that such discrepancies have no bearing on the competitive assessment of the proposed concentration, they will not be mentioned in the decision.

9 The Estonian and Lithuanian markets are very small in size, which makes the calculation of market shares difficult.

10 These market shares have been calculated based on the sales of the reagents only, as it is not always easy to allocate the equipment revenues to immunochemistry or infectious immunology. As explained above,

would be below 15% at EEA level and in each national market, with the sole exception of Estonia, where it would reach [15-25]% (Siemens/DPC [5-15]% and Bayer [0-10] %).

39. In the immunochemistry market, excluding immunology, the combined market share of the merged entity would rise to make it the number one player with [15-25]% of the market (DPC [5-15] % and Bayer Diagnostic [5-15] %) at the EEA level. Roche and Abbott would be second and third with a very similar market position:

Siemens/DPC + Bayer Diagnostic	[15-25]%
Roche	[15-25]%
Abbott	[15-15]%
OCD	[0-10]%
Beckman Coulter	[0-10]%
Dade Behring	[0-5]%
Others	[15-25]%

EEA market share – Immunochemistry (excl. infectious) equipment and reagents – parties' estimates

40. At national level, the parties combined market share would exceed 25% in the following countries: Estonia ([35-45]% of a € [0-5] million market, with Siemens/DPC [30-40]% and Bayer Diagnostic [0-5]%); Norway ([30-40]% of a € [10-20] million market, with Siemens/DPC [10-25]% and Bayer Diagnostic [10-20]%); Portugal ([30-40]% of a € [35-45] million market, with Siemens/DPC [15-25]% and Bayer Diagnostic [15-25]%); The Netherlands ([30-40]% of a € [25-35] million market, with Siemens/DPC [20-30]% and Bayer Diagnostic [5-15]%); Lithuania ([25-35]% of a € [0-5] million market, with Siemens/DPC [20-30]% and Bayer Diagnostic [0-10]%); Denmark ([25-35]% of a € [15-25] million market, with Siemens/DPC [0-10]% and Bayer Diagnostic [20-30]%); Ireland ([25-35]% of a € [10-20] million market, with Siemens/DPC [10-20]% and Bayer Diagnostic [10-20]%); the United Kingdom ([25-35]% of a € [100-125] million market, with Siemens/DPC [5-15]% and Bayer Diagnostic [15-25]%); Belgium ([20-30]% of a € [45-55] million market, with Siemens/DPC [10-20]% and Bayer Diagnostic [5-15]%); Italy ([20-30]% of a € [300-350] million market, with Siemens/DPC [15-25]% and Bayer Diagnostic [5-15]%). In all these national markets, all major competitors (Roche, Abbott, OCD, Beckman Coulter, Dade Behring) are present and constitute a sufficient competitive constraint on the market position of the merged entity.

41. Additionally, the market investigation has shown that generally the systems supplied by Bayer Diagnostic and Siemens/DPC are not particularly close competitive products. Bayer Diagnostic is often seen by customers as a closer competitor to the high throughput integrated systems (around 200 assays/hour and possibility to link with clinical chemistry equipment) supplied by Roche and Abbott, Siemens/DPC is regarded as a provider of non integrated system with lower throughput (below 200 assay/hour), whose strength is in a broad assay menu rather than speed and capacity. At the same time, the market investigation has also

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some customers use the same machines for both categories of tests. Since reagent sales are strictly correlated with equipment sales, they constitute a good proxy of the players' competitive position.

indicated that some of the systems of Bayer Diagnostic and Siemens are direct competitors: in particular Bayer Diagnostic's ADVIA Centaur CP, a non integrated medium throughput system (180 assays/hour) is often indicated as a close competitor of Siemens/DPC's Immulite 2000/2500 system. This is the case also according to internal documents of the parties which indicate that […]. However, no competition concerns would arise from the combination of Siemens/DPC and Bayer Diagnostic in this particular segment, as it is covered by all major competitors who offer valid alternatives to the combined entity systems

42. Similarly, internal documents of the parties indicate that […]. While the proposed concentration may lead to the elimination of Siemens/DPC as a stand alone (i.e. independent from Bayer Diagnostic) competitor in high throughput automated systems, there is no threat of a significant impediment to effective competition, given the presence of other strong market players in the segment.

43. Turning to the analysis of the competitive effects of the merger considering the EDMA classification at the panel level, the merged entity would enjoy a market share higher than 20% at EEA level on 6 thematic panels (cancer, thyroid, fertility, anaemia, metabolic functions and allergy), with a leadership position in fertility ([30-40]% with Siemens/DPC [15-25]% and Bayer Diagnostic [5-15]%), metabolic functions ([20-30]% with Siemens/DPC [15-25]% and Bayer Diagnostic [0-10]%) and thyroid ([20-30]% with Siemens/DPC [5-15]% and Bayer Diagnostic [10-20]%). The combined entity would be rather weak or almost absent on 3 panels (cardiac, TDM and DOA). For all thematic panels but allergy, the strongest competitors Roche and Abbott show a significant presence. In allergy, where Roche and Abbott do not have any significant presence, the clear market leader is Phadia, a specialised player which does not appear in the table below (in view of this specificity, allergy will be discussed more in detail in the following).

	Cardiac	**Cancer**	**TDM**	**DOA**	**Thyroid**	**Fertility**	**Anaemia**	**Metabolic functions**	**Allergy**
EEA market (M€)	**[175-225]**	**[250-300]**	**[100-125]**	**[60-70]**	**[300-350]**	**[175-200]**	**[125-150]**	**[100-125]**	**[125-150]**
Siemens/ Bayer Diag	**[5-15]%**	**[20-30] %**	**[0-10] %**	**[…] %**	**[20-30] %**	**[30-40] %**	**[20-30] %**	**[20-30] %**	**[20-30] %**
Abbott	**[10-20] %**	**[20-30] %**	**[30-40] %**	**[20-30] %**	**[15-25] %**	**[10-20] %**	**[15-25] %**	**[5-15] %**	**[0-5] %**
Roche	**[25-35] %**	**[15-25] %**	**[10-20] %**	**[20-30] %**	**[20-30] %**	**[15-25] %**	**[20-30] %**	**[15-25] %**	**[0-5] %**

Immunochemistry panels – market shares – parties' estimates

44. When breaking down the EEA aggregate panel results country per country (for allergy, see further below), according to the data provided by the parties, the merged entity would achieve high market shares (in the range of 40% to 60%) in a number of countries for Thyroid (Denmark, Ireland, The Netherlands, Portugal), Fertility (Germany, The Netherlands, Portugal, United Kingdom, Norway, Estonia

and Lithuania[11]), Metabolic Functions (Italy, The Netherlands, Poland, The United Kingdom, Poland and Estonia), Anaemia (Denmark, Ireland, Norway and Estonia[12]) and Cancer (Denmark, The Netherlands and Estonia).

45. The market investigation has covered all national markets where the combined entity would entertain a strong position in one or more panels. The results of the market investigation point to a consistent picture across geographic markets, which does not indicate that the proposed concentration will lead to a significant impediment to effective competition.

46. Firstly, the market investigation confirmed that the parties' competitors are as a rule present in all geographic markets, either directly or (especially when the market size is small) through distributors. Competing suppliers have often a strong position in neighbouring markets to those where the combined market shares of the combined entity are high, which suggests that they could easily increase their presence in such markets e.g. in the event of a price increase.

47. The presence of other strong competitors limits the potential competition concerns. Most laboratories report that after the merger, the merged entity will continue to face strong competition pressure from other players, who will remain numerous in all EEA countries. The strong position of other players is well established on all the panels, and laboratories have the possibility to change provider at an acceptable price. This ensures that the commercial relation with the laboratories and competitors will remain strong and maintain price pressure on the merged entity, even when the latter enjoys a position of first supplier.

48. Secondly, the market investigation, while confirming overall the market shares provided by the parties, have indicated that sales of competitors are higher than estimated by the parties in specific countries, (e.g. in the Netherlands, Germany, Portugal and Estonia). While the corrected figures do not change the qualitative picture of the situation, they confirm that competitors have significant foothold also in the markets where the parties are stronger.

49. Thirdly, and more importantly, in all EEA countries a consistent majority of customers have indicated that post merger they will have sufficient alternatives for all thematic panels considered. Within the specific panels, i.e. at the level of assays, the large majority of customers consider that the proposed concentration will not limit their choice. Indeed, while there are some specific assays (normally not commonly used) that are currently supplied by Siemens/DPC or Bayer Diagnostic only, there are no relevant examples of assays that are currently supplied only by the two companies and no other market players. Finally, a large

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11 In the latter two countries, combined market shares would be higher than 70%. However, it should be taken into account that the size of the markets is extremely small at the level of panels (€ [<500,000] in Estonia and € [<500,000] in Lithuania), which makes computation and interpretation of market shares a less meaningful exercise. In Estonia, for example, Bayer's sales in 2005 for fertility assays amounted to € […] ([0-5]% of the market). […] in 2003 or 2004.

12 In Estonia, combined market shares would be higher than 70%. However, it should be taken into account that the size of this market is extremely small at the level of panels (€[<500,000]). Bayer's sales in 2005 for anaemia assays amounted to € […] ([5-15] % of the market). […] in 2003 or 2004.

and consistent majority of customers consider that the proposed concentration will not give to the combined entity the power to raise prices.

Allergy assays

50. The thematic panel of allergy is different from the other panels considered above because none of the main immunochemistry competitors supply a complete range of allergy assays, while Siemens/DPC and Bayer Diagnostics do. The concentration will therefore combine the only two full line producers with a broad menu in the allergy panel.

51. The parties submit that allergy assays are rarely performed on high throughput systems at the same time as common assays belong to thematic panels. They also submit that the allergy panel is largely dominated by a specialised supplier, Phadia, which accounts for over half of the EEA market is dominant in several national markets. The reported combined market share of the parties would be above 40% only in Denmark ([40-50] % of a € [0-5] million market according to the parties), Norway ([45-55]% of a € [0-5] million market) and Czech Republic, where it would exceed 90% of a € [0-5] million allergy market.

52. The market investigation confirmed that Phadia is by far the largest provider of allergy assays in the EEA and in most national markets. It also indicated that Phadia is the closest competitor to Siemens/DPC. Conversely, Bayer Diagnostics' and Siemens/DPC's strengths in the allergy market are not entirely aligned. Indeed, a sizeable share of the sales of Bayer Diagnostic within the allergy panel ([…]% of total sales of € […] million in the EEA) is accounted for by a single assay, 'Total IgE'. Total IgE is a generic test to screen for allergy and is offered by most suppliers (including Abbott, Roche and Beckman Coulter in addition to Bayer Diagnostic) to be run on integrated systems for common assays.

53. By contrast, Siemens/DPC realises only […]% (out of total sales of almost […] million for the allergy panel) of its turnover with the assay total IgE. Almost […]% of Siemens/DPC's sales in allergy come from a broad offer of more specific allergy tests, some of which (including 'specific IgG' and 'ECP') are not offered by Bayer Diagnostic. Some customers use Siemens/DPC equipment as dedicated systems to perform allergy assays or allergy tests in conjunction with other less common tests. For more specific allergy tests, Phadia is the only supplier with a menu comparable to that of Siemens/DPC. Phadia's equipment is usually used as a dedicated system to perform allegy tests.

54. The market investigation has also shown that in most markets the actual market shares of the parties are lower than what they had estimated. This is the case in particular in the three countries where the parties' estimated their market position to be strongest: actual market shares of the combined entity would be below 40% in Denmark and Norway and between 80% and 90% in the Czech Republic.

55. While the combined entity's presence in the Czech Republic would still be very important, it is to be noted that several factors limit the capacity of the combined entity to use a high market share to raise prices:

    (i) While Phadia's presence in the Czech Republic is more limited than in other similarly sized or bigger markets within the EEA, there is no reason to believe that the company would not be able to react to price increases by the

merged entity and gain market share. As noted above, Phadia is the closest competitor of Siemens/DPC in the allergy panel.

(ii) More importantly in the context of this decision, the large majority of Czech customers taking part in the market investigation do not consider that the merged entity would hold significant market power for allergy assays or that it would be able to increase prices for this panel in particular. This reaction was consistent across customers of different sizes (i.e. large laboratories using equipment from several suppliers and small customers using a limited number or only one system)

(iii) Data on sales in the first half of 2006 indicates a drop in the parties' sales of allergy assays (for Siemens/DPC sales less than € […] million in the first half of 2006 against € […] million in the whole of 2005; for Bayer Diagnostic € […] against € […]) in a slightly growing market. This has led to a significant loss of market share to competitors (chiefly to Phadia), estimated to have a market share around [25-35]% in the first half of 2006. While these figures do not constitute a trend, they show that relatively limited changes in sales in small market can lead to large swings in market share.

56. Given the specificities of allergy assays the market investigation looked, for all the affected markets, also at the potential advantage for the parties to be the only immunoassay actor to have the possibility to provide a system covering all immunoassay panels, including allergies. While a number of laboratories indicated that offering a broad menu of assays in general is an advantage, the large majority did not consider the combination of allergy and other immunoassay panels as a decisive advantage. Most laboratories confirmed in the market investigation that they perform allergy test on separate equipment, and that they are most likely to continue to do so in the future.

57. Based on the elements gathered in the market investigation, notably the practice of performing allergy testing on separate equipment, there are no indications that the merged entity might benefit from a significant advantage as being the only provider of complete systems including allergies.

58. Therefore the proposed concentration is not expected to lead to a significant impediment to effective competition in the common market or in a substantial part of it.

VI. CONCLUSION

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

For the Commission
signed
Neelie KROES
Member of the Commission