EN

Case No COMP/M.6162 - PFIZER/ FERROSAN CONSUMER HEALTHCARE BUSINESS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.6162 - PFIZER/ FERROSAN CONSUMER HEALTHCARE BUSINESS
Notification of 2 May 2011 pursuant to Article 4 of Council Regulation No 139/2004[1]
Publication in the Official Journal of the European Union No C 141, 12.05.2011, p. 15.

1. On 2/05/2011 the European Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004[2] by which Pfizer Inc. ("Pfizer", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the consumer health care business of Ferrosan Holding A/S ("Ferrosan", Denmark) by way of purchase of shares.

I. THE PARTIES

2. Pfizer is a global research-based biomedical and pharmaceutical company active in discovering, developing, manufacturing, marketing and selling innovative medicines for

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

[2] OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

humans and animals. Pfizer also has a portfolio of consumer health products, including over-the-counter ("OTC") products, dietary supplements and personal care products.

3. Ferrosan is active in consumer healthcare products, in particular food and nutritional supplements and skincare products.

II. THE OPERATION

4. By virtue of a Stock Purchase Agreement (signed on February 3, 2011), Pfizer, through a wholly owned subsidiary, will acquire from Altor (a private equity fund) and from Scan Vita A/S (Denmark) 100% of Ferrosan Holding A/S, the company holding the consumer healthcare business of Ferrosan[3].

5. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EU Merger Regulation.

III. EU DIMENSION

6. The operation does not have an EU dimension within the meaning of Article 1 of the Merger Regulation because in 2009 (i) Ferrosan's EU turnover (EUR […] million) did not exceed EUR 250 million and (ii) Ferrosan did not generate a turnover in excess of EUR 25 million in at least three EU Member States. Nonetheless, the transaction fulfils the two conditions set out in Article 4(5) of the Merger Regulation since (i) it is a concentration within the meaning of Article 3 of the Merger Regulation, and (ii) it has to be notified in at least three Member States.

7. On 28 March 2011, the Commission received, by means of a reasoned submission, a referral request pursuant to Article 4(5) of the Merger Regulation with respect to the transaction cited above. As none of the Member States competent to review the transaction expressed their disagreement as regards the request to refer the case, the Commission has jurisdiction to examine the transaction pursuant to Article 4(5) of the Merger Regulation.

IV. ASSESSMENT

RELEVANT PRODUCT AND GEOGRAPHIC MARKET DEFINITIONS

1. Horizontal overlaps (food and nutritional supplements and OTC pharmaceuticals)

8. The transaction mainly concerns the food and nutritional supplement segment of consumer health products, in particular, multi-vitamin products. Some of these types of products may also be registered as OTC pharmaceuticals.

9. The Commission has not previously analysed multi-vitamins **product markets** but has considered single vitamin products and specialised vitamins[4]. In these cases, the Commission has taken as a starting point for market definition purposes the Anatomical

[3] Ferrosan's medical devices business and the company holding the real estate property where Ferrosan has its headquarters will be purchased by Altor prior to the consummation of the proposed transaction.

[4] See Case COMP/M.5865 *Teva/Ratiopharm*, Decision of 3 August 2010 (Vitamin B1 and Vitamin C products) and Case COMP/M.5778 *Novartis/Alcon* Decision of 9 August 2010 (eye vitamins).

Therapeutic Chemical ("ATC") division of medicines by therapeutic use devised by the European Pharmaceutical Marketing Research Association ("EphMRA") and maintained by EphMRA and the "Midas" database of Intercontinental Medical Statistics ("IMS")[5]. In some cases, certain vitamin markets have also been assessed on this basis[6]. The EphMRA classification consists of four levels. In recent cases, the Commission assessed overlaps at both the third and fourth levels of the ATC classification (ATC3 and ATC4 respectively)[7].

10. In the present case, most of the products of the parties (including vitamins) are not registered as prescription or OTC pharmaceutical products, but are sold as food supplements (for which medical claims are generally not allowed). Whereas the ATC classification includes categories that may be relevant for multi-vitamins[8], the ATC-based IMS Midas database does not apparently track sales of these products (food supplements) consistently (including the parties' products).

11. However, IMS has a proprietary classification dedicated specifically to consumer health products, the so-called International Consumer Health Classification (ICH classification). This has a corresponding database called OTCims. The ICH classification has four levels and the corresponding database appears to provide more complete data for consumer health markets, including vitamins, than the ATC-based IMS Midas database. The ICH database has been used as a possible basis for market definition in a number of previous Commission decisions relating to OTC pharmaceuticals and consumer health products[9].

12. The ICH classification largely corresponds to the ATC classification in the markets concerned by the transaction, i.e. multi-vitamins.

13. Multi-vitamins are classified in two ATC3 categories: A11A (multi-vitamins with minerals) and A11B (multi-vitamins without minerals). Each of these categories is sub-divided into ATC4 categories based on the target group (e.g. multi-vitamins for paediatric, geriatric and pre-natal use).

14. The ICH classification also has two main second level (OTC2) categories for multi-vitamins, one with and one without minerals (04A and 04B), thus corresponding to the respective ATC3 categories. Similarly, the ICH classification further sub-divides each OTC2 category according to the *target groups* - this forms the basis for the third level (OTC3) categories. In addition, the ICH classification further sub-divides the OTC3

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5 The EphMRA ATC classification, whilst very similar to the ATC classification maintained by the World Health Organization (WHO), is not exactly the same as the latter. The WHO classification uses similar categories but is based on active ingredients and serves a scientific, rather than commercial, purpose. Thus, a given active ingredient is classified in only one place in the WHO classification, whereas products based on it may be classified in more than one class of the IMS classification, depending on formulation and approved use in a given country.

6 See *Teva/Ratiopharm op cit* and *Novartis/Alcon op cit*..

7 See Case M.5253 *Sanofi-Aventis/Zentiva*, Decision of 4 February 2009; *Teva/Ratiopharm op cit* and Case M.5295 *Teva/Barr*, Decision of 19 December 2008.

8 In the ATC3 category, A11A (multi-vitamins with minerals) and A11B (multi-vitamins without minerals), with further possible sub-segmentations in ATC4 categories based on the target group (e.g. multi-vitamins for paediatric, geriatric and pre-natal use).

9 See Case COMP/M.5530 *GSK/Stiefel* Decision of 17 July 2009 and Case COMP/M.4314 (Decision of 11 July 2009) *Johnson&Johnson/Pfizer Consumer Health Business*.

categories into several fourth level (OTC4) categories according to the *forms of administration* of the products (e.g. capsules/tablets, powders, liquids etc).

15. According to the parties, a distinction based on administration form within different target groups (OTC4 level) is not relevant for market definition. Where substitutability between multi-vitamins in different administration forms is limited (e.g. infants can only take multi-vitamins in liquid form), this distinction anyway corresponds to the distinction based on target group (e.g. OTC3 level). For other target groups, in particular adults, there is substitutability between the main administration forms. In any event, the parties argue that a supplier of a certain multivitamin formulation in one form can also, without significant investments, start supplying it in another form. The market investigation confirmed these points.

16. In addition to the ATC and ICH classification, the parties have also used a third party classification and database, Euromonitor, to verify overlaps and market positions. Euromonitor is an international market research company that tracks sales of consumer products, including consumer health products. Euromonitor has an overall category for multi-vitamins and does not segment this category further.

17. The Commission has previously also made a distinction between prescription pharmaceuticals and non-prescription/over-the-counter ("OTC") pharmaceuticals.[10] In the present case, this distinction does not appear to be relevant given that the overlaps are confined to OTC products.

18. Similarly, no concerns would arise considering even a potential distinction between private label and branded products[11] or between pharmacy and other retail sales channels. Whereas these may be relevant distinctions for at least the assessment of closeness of competition, they do not have a bearing on the assessment in the present case.

19. The product market definition can be left open in this case, since irrespective of the market definition used, there are unlikely to be competition concerns.

20. The Commission has previously considered **the geographic market** for both finished dose pharmaceuticals[12] and consumer health products to be national in scope[13]. There are no specific circumstances in this case that would indicate any need to alter this approach.

21. In any event, the geographic market definition can be left open as the transaction is unlikely to raise competition concerns either at the national or EEA level.

Vertical relationships (hard gelatine capsules)

22. Hard gelatine capsules are a form of oral dosage in which a drug can be delivered/administered. Hard gelatine capsules are a commodity product manufactured

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10 See e.g. Case COMP/M.5865 *Teva/Ratiopharm* Decision of 3 August 2010 and cases cited therein.

11 This possible distinction has most recently been considered for consumer vision products (e.g. contact lens solutions) in Case COMP/M.5778 *Novartis/Alcon* Decision of 9 August 2010.

12 See e.g. Case COMP/M.5865 *Teva/Ratiopharm* Decision of 3 August 2010 and cases cited therein.

13 See Case COMP/M.2773 *Nestle/Loreal Inneov*, decision of 26 July 2002.

from animal gelatine. Other oral dosage methods include tablets, soft gelatine capsules, powder and liquid.

23. The parties submit that the product market may be wider than hard empty gelatine capsules and that the geographic scope should be at least EEA-wide.

24. In its previous decisions, the Commission left the product and geographic market definition open[14].

25. The exact product and geographic market definitions can be left open because the transaction does not raise any competition concerns irrespective of the precise market definition.

COMPETITIVE ASSESSMENT

26. In previous human health cases, the Commission has distinguished three categories of affected human pharmaceuticals markets. These groupings are:

Group 1: The Parties' joint market share exceeds 35% and the increment exceeds 1%;

Group 2: The Parties' joint market share exceeds 35% but the increment is less than 1%;

Group 3: The Parties' joint market share is between 15% and 35%.

Horizontal effects

27. The transaction gives rise to overlaps at the national level only within the multi-vitamins segment.

28. The Parties systematically provided market data based on i) the ATC-based IMS Midas database; (ii) the ICH/OTCims database and iii) the Euromonitor database.

29. Based on the **ATC classification and the IMS Midas data**, the transaction does not give rise to any affected markets at either the ATC3 or ATC4 level.

30. Based on the **ICH classification and the corresponding OTCims database**,[15] the transaction leads to several affected markets, one in "Group 1", none in "Group 2" and several in "Group 3".

31. Based on **Euromonitor** data, the proposed transaction would give rise to a number of "Group 3" affected markets.

32. In the present case, the Commission examined in more detail the only "Group 1" affected market given the more limited market shares and/or increments in other markets.

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14 Cases COMP/M.5476 *Pfizer/Wyeth*, decision of 17.07.2009; and M.2922-*Pfizer/Pharmacia*, decision of 27 February 2003.

15 OTCims covers only 19 EEA Member States. The parties' activities overlap in only two of the Member States not covered by OTCims (Latvia and Lithuania). In these countries the parties made an assessment of market positions along the ICH/OTCims classification using other third party data and their own market intelligence.

33. On the basis of 2010 data, the only "Group 1" affected market is in Bulgaria, in the OTC4 category 04A1C (*multi-vitamins with minerals for adults* – caps/tabs), with a combined market share of [40-50%] (Pfizer [30-40%] & Ferrosan [10-20%])[16].

34. The notifying parties argue that their combined market share in this category in Bulgaria is overstated because (i) a distinction by customer groups and administration form is not fully relevant for multi-vitamins; (ii) Pfizer's product (Centrum A to Zinc) and Ferrosan's product (Multitabs) are not each other's closest competitors, Pfizer's being considered as a premium brand, while Ferrosan's is priced much lower (which also means that Pfizer's market share is overstated on a turnover basis and would only be [10-20%] on a volume basis); (iii) this specific market for multi-vitamins is small and unsophisticated (total size EUR […] million, Pfizer EUR […] million, Ferrosan EUR […] million); (iv) there is strong competition in the market from large competitors, both new (Bayer, which has reached 7% market share two years after entry) and from already established players (such as Dethleffsen and Sanitas LTH); and (v) there are virtually no barriers to entry/expansion in the market.

35. On these points, the market investigation confirmed that the relevance of a distinction by customer groups and administration form for multi-vitamins was limited, that the parties' two products are not generally considered as each other's closest competitor, that there were other strong competitors on the market and that there were no issues regarding barriers to entry/expansion in the market. In the light of these points and the parties' market shares, it can be concluded that there are no competition concerns for the OTC4 category 04A1C (*multi-vitamins with minerals for adults* – caps/tabs) market in Bulgaria.

36. As regards the other markets referred to in paragraph 26 above, the ICH/OTCims "Group 3" markets are in Bulgaria, the Czech Republic and the Slovak Republic. The combined market shares in these markets range between [10-20%] and [30-40%].

37. More specifically, in Bulgaria, the parties would have combined market shares of (i) [20-30%] (Pfizer [20-30%]; Ferrosan [5-10%]) in the OTC2 category 04A (*multi-vitamins with minerals)* and (ii) [30-40%] (Pfizer [20-30%]; Ferrosan [5-10%]) in the OTC3 category 04A1 (*multi-vitamins with minerals for adults)*. In the Czech Republic, they would have combined market shares of (i) [10-20%] (Pfizer [10-20%]; Ferrosan [0-5%]) in the OTC2 category 04A (*multi-vitamins with minerals)*; (ii) [10-20%] (Pfizer [10-20%]; Ferrosan [0-5%]) in the OTC3 category 04A1 (*multi-vitamins with minerals for adults*) and [20-30%] (Pfizer [20-30%]; Ferrosan [0-5%]) in the OTC4 category 04A1C (*multi-vitamins with minerals for adults - caps/tabs*). Finally, in the Slovak Republic, they would have combined market shares of [10-20%] (Pfizer [10-20%]; Ferrosan <[0-5%]) in the OTC3 category 04A4 (*multi-vitamins with minerals for perinatal use*); ii) [10-20%] (Pfizer [10-20%]; Ferrosan <[0-5%]) in the OTC4 category 04A1C (*multi-vitamins with minerals for adults – caps/tabs*); and iii) [10-20%] (Pfizer [10-20%]; Ferrosan <[0-5%]) in the OTC4 category 04A4C (*multi-vitamins with minerals for perinatal use – caps/tabs*).

38. The Euromonitor affected markets are found in the overall segment of multi-vitamins in Bulgaria, the Czech Republic, Hungary and Poland with combined market shares

16 In Portugal, the ICH database reports combined market shares of around [50-60%] (with an increment by Ferrosan of well below 1%) in two segments. However, according to the parties, Ferrosan does not generate any sales in Portugal and these sales are in fact generated by a third party parallel importer that is independent of Ferrosan.

between [10-20%] and [20-30%]. Since Hungary and Poland are not affected markets based on OTCims, this is due to the differences in the data collection methodology.

39. The notifying parties argue that none of the above combined market shares raise any concerns. They put forward the argument of highly fragmented markets where strong international and local competition is always present.

40. In any event, concerns can be excluded for all "Group 3" markets, irrespective of which database is used.

41. Although the parties sell only branded products and predominantly through pharmacy channels in the countries where there is an overlap, the possible distinction between branded/private label products and sales channels does not change the competitive assessment due to the relative insignificance of private label and non-pharmacy sales channels in the countries where there is an overlap. The share of private label multivitamin sales in the countries where the parties' activities overlap is immaterial (less than 1%). Similarly, the parties submit that the pharmacy segment accounts for a very high proportion (85% or over) in all but one of the overlap countries.[17]

42. In light of the above factors, the parties' moderate combined market shares and the presence of a number of other strong competitors (such as Boehringer Ingel, Sanofi Aventis and Walmark in the Czech Republic, Merck KGAA and Sanofi Aventis in the Slovak Republic and Bayer, Nycomed and Walmark in Bulgaria), competition concerns in these markets can be excluded.

Vertical effects

43. Ferrosan currently purchases all its hard gelatine capsule demand from Capsugel, currently owned by Pfizer[18]. This amounts to approximately EUR […] of purchases. Ferrosan accounts for less than 1% of Pfizer's global sales and of total demand of hard gelatine capsules.

44. Based on Pfizer's own estimates, it has a worldwide market share of approximately [60-70%] of hard gelatine capsules and of approximately [70-80%] in the EEA.

45. As specified by the parties, the transaction would not lead to input foreclosure as Pfizer's incentives to foreclose would not change due to the transaction. In particular, Pfizer would not risk damaging the hard gelatine capsule business in favour of a very minor vertical relationship with Ferrosan (to this effect, the income generated by Pfizer from hard gelatine capsules is significantly higher than the entire turnover of Ferrosan).

46. In light of the above, it can be concluded that there will be no foreclosure (customer or input) in the vertical market.

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17 It is only in Hungary where the non-pharmacy channel accounts for a significant proportion (>15%) of all sales, i.e. 75%. However, OTCims in Hungary only reports pharmacy sales. Using this database therefore, affected markets can be excluded even in the worst case scenario (pharmacy only).

18 It should also be noted that Pfizer is currently in the process of selling Capsugel to a private equity fund.

V. CONCLUSION

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

For the European Commission,
(Signed)
Maroš ŠEFČOVIČ
Vice-President of the European Commission