EN

Case No COMP/M.6205 - ELI LILLY / JANSSEN PHARMACEUTICA ANIMAL HEALTH BUSINESS ASSETS

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

Subject: **Case No COMP/M.6205 - ELI LILLY / JANSSEN PHARMACEUTICA ANIMAL HEALTH BUSINESS ASSETS**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

1. On 13 May 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 by which the undertaking Eli Lilly and Company acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, control of Janssen Animal Health Business Assets (JAH), a division of Janssen Pharmaceutica NV ("Janssen", Belgium) by way of purchase of assets (Eli Lilly is designated hereinafter as the "notifying party", and together with JAH as "the Parties").

2. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation. Having finalised its preliminary first-phase market investigation, the Commission could initially not exclude that the notified operation raised serious doubts, in particular in relation to a sub-group of customers that use a strategy with a chemical-based coccidiostat for the preventive treatment of coccidiosis in poultry. At the same time, additional information on this issue was gathered to definitively ascertain whether such a potential concern should be maintained.

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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.

3. During the course of the proceedings, the notifying party submitted commitments in accordance with Article 6(2) of the Merger Regulation, which were designed to eliminate the competition concerns identified by the Commission. The notifying party has also provided additional evidence in support of the view that the market should not be limited to one for chemical-based products as price discrimination against customers in this segment would not be possible post-transaction. In the light of this evidence, the Commission concludes that the notified operation does not raise serious doubts as to its compatibility with the common market and EEA Agreement, as is outlined in the following.

I. THE PARTIES AND THE OPERATION

4. Eli Lilly ("Eli Lilly", the US) is a US company listed on the New York Stock Exchange. It is a research-based, global pharmaceutical company active in the discovery, development, manufacture and sale of pharmaceutical products for humans and animals. Elanco is Eli Lilly's animal health subsidiary.

5. Janssen Animal Health Business Assets ("JAH") is an operating division of Janssen Pharmaceutica NV (a Johnson & Johnson company), headquartered in Belgium. JAH develops and sells animal health pharmaceuticals targeting disease segments in companion animals and livestock, with special emphasis on swine and poultry.

6. The proposed transaction consists in the acquisition by Eli Lilly of JAH further to the Asset Purchase Agreement between Janssen and Eli Lilly dated 10 March 2011.

II. CONCENTRATION

7. Following completion of the transaction, Eli Lilly will wholly own and control JAH and will integrate it with its animal health company, Elanco. The transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

8. The notified concentration does not have an EU dimension within the meaning of Article 1 of the Merger Regulation. However, on 11 April 2011, the notifying party informed the Commission in a reasoned submission pursuant to Article 4(5) of the Merger Regulation that the concentration was capable of being reviewed under the national competition laws of at least three Member States, namely Austria, Germany, Cyprus, Greece (post-merger), Ireland, Italy, Portugal, Slovakia, Spain and the UK, and requested the Commission to examine it. None of the Member States competent to examine the concentration indicated its disagreement with the request for referral within the period laid down by the Merger Regulation.

9. Therefore, the concentration is deemed to have an EU dimension pursuant to Article 4(5) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

(1) Introduction

1.1 Product market

10. The Parties largely follow the principles for the definition of product markets in the field of animal health set out in previous Commission decisions, in particular Pfizer/Wyeth.[2] In previous Commission decisions, animal health products were grouped by species and a differentiation was made between non-prescription and prescription products.

11. Prescription products were segmented in three groups: (i) biologicals (e.g. vaccines), (ii) pharmaceutical products and (iii) medicinal feed additives.

12. The Parties' activities overlap in pharmaceutical products and medicinal feed additives.

13. Veterinary pharmaceuticals include a large group of medicines containing a large variety of active substances which prevent or treat a wide range of animal diseases and disorders. In previous decisions, the Commission segmented veterinary pharmaceuticals into the following categories: (i) parasiticides, (ii) antimicrobials, (iii) endocrine treatments, (iv) anti-inflammatories and analgesics and (v) performance enhancers and others.

14. Within each of the above segments, the Commission has defined product markets and examined closeness of competition between any two given products on the basis of the following criteria: (i) animal species treated, (ii) active substance, (iii) target pathology/scope of effectiveness, (iv) route of administration, (v) duration of efficacy and (vi) duration of withdrawal periods.

1.2 Geographic market

15. In previous decisions, the Commission has consistently considered that relevant geographic markets in the animal health sector have a national dimension.[3] The market investigation has broadly confirmed that markets in the animal health sector are still national. For the purposes of this case, the scope of the geographic market definition can be left open as the proposed transaction does not give rise to serious doubts under any possible definition.

1.3 Competitive assessment

16. Based on the principles outlined above, the Parties have identified three groups of potentially affected horizontal markets: (i) anti-coccidials for poultry,[4] (ii) endoparasiticides/endectocides[5] for production animals and (iii) endoparasiticides/endectocides for horses.

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2 COMP/M.5476 *Pfizer/Wyeth*, decision of 17 July 2009.

3 See e.g. M.4691 *Schering-Plough/Organon Biosciences*, paras. 42-45.

4 Anti-coccidials act against single-celled parasites known as coccidia.

5 Endoparasiticides and endectocides treat non-coccidia or multi-celled parasites.

17. These affected markets are described below. In line with Commission precedents in the animal health sector, the notifying party has classified affected markets in three categories:

    - Group 1: the Parties' combined market share exceeds 35% and the increment exceeds 1%;

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

    - Group 3: the Parties' combined market share is between 15% and 35%.

18. The proposed transaction leads to no vertical links between the Parties.

(2) Anti-coccidial products (prophylactic) for poultry

19. In the field of medicinal feed additives, the Parties' activities lead to an affected market in one type of prophylactic anti-coccidial products, namely coccidiostats for poultry, authorised as feed additives.

(i) Product market

20. Prophylactic anti-coccidial products for poultry include coccidiostats for poultry, authorised as feed additives, and coccidiosis vaccines in poultry, authorised as veterinary medications.[6] There are three types of coccidiostats for poultry currently marketed in the EEA: (i) chemical-based coccidiostats, which are synthetically manufactured, (ii) ionophores-based coccidiostats, which have an organic component and (iii) a combination chemical-ionophore product (*Maxiban*) of Eli Lilly. Eli Lilly is the sole company that currently markets a combination coccidiostat in the EEA.

21. The Commission has analysed markets comprising anti-coccidial products in two cases, Merck/Rhone-Poulenc-Merial[7] and Schering-Plough/Oreganos BioSciences[8], but has ultimately left the product market definition open.

22. In the view of the notifying party, the relevant product market should comprise all products used as a prophylactic treatment to prevent coccidiosis in poultry, namely coccidiostats for poultry, authorised as feed additives, and coccidiosis vaccines for poultry, authorised as veterinary medications.

23. The market investigation results have shown that there are significant differences between vaccines and cocciodiostats in terms of both product characteristics and price. Vaccines are veterinary medications that require prescription and are used primarily for long living or biologically produced poultry (e.g. layers, breeders, bio/free range poultry), whereas coccidiostats are feed additives dispensed as over-the-counter (i.e. without a need for veterinary prescription) in food pre-mixes, and are a primary preventive treatment for birds

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6 There is also a third category of anti-coccidial products: pharmaceutical coccidiostats, approved as veterinary medicinal products under Directive 2001/82, which are used to treat sporadic coccidiosis outbreaks and therefore cannot be used in standard coccidiosis control programmes. In line with Commission precedents, these products have not been included in the same relevant product market as prophylactic anti-coccidials for poultry.

7 M.885 *Merck/Rhone-Poulenc-Merial*, decision of 1 July 1997.

8 M.4691 *Schering-Plough/Organon BioSciences*, decision of 11 October 2007.

with short economic life, such as standard broilers (short living chicken for meat) or meat turkey. On average, vaccines are two to four times more expensive than coccidiostats[9] and are therefore more cost effective in use for long living birds. A few respondents to the investigation, however, have also suggested that the prevalence of vaccine usage predominantly for long living birds can vary depending on the geographic area concerned and customer preferences.[10]

24. Accordingly, the markets for prophylactic anti-coccidials for poultry can be potentially segmented into: (i) coccidiosis vaccines and (ii) coccidiostats for poultry. However, the exact product market definition can be left open for the purposes of this case, as concerns do not arise under any potential market definition.

25. In line with the information submitted by the notifying party, the overall results of the investigation have shown that in order to ensure that at the end of its lifetime, a disease-free broiler is available to the market, throughout the life-cycle of the bird, the use of a chemical-based and/or a ionophore based coccidiostat depends on the strategy chosen by a customer throughout the life of a bird.[11] Operators have three main strategies available:

    (i) Full ionophore or "shuttle ionophore" strategy, which entails the use of one or more ionophores, and no chemicals, during the whole life of a bird. Unlike with chemical-based strategies, bacteria (coccidia) build up little or no resistance to the ionophores and so this limits the need to rotate products between flocks. Unlike chemicals, ionophores can also fight separate bacterial infections.

    (ii) "Potentiated ionophore" strategy, which involves using a combination ionophore-chemical coccidiostat (i.e. Eli Lilly's *Maxiban*) during the first 23-28 days of life (starter and grower stages) and a traditional ionophore during the finishing stage of life. This strategy both kills the coccidia (in early life) and builds the immunity. As with the ionophore strategy, this approach involves fewer resistance problems and controls bacteria.

    (iii) "Chemical shuttle" strategy, which involves a chemical-based coccidiostat, to kill the bacteria during the starter stage of life, followed by ionophore to build immunity during the grower and finishing stages. The disadvantage of this approach is that the use of chemical coccidiostats causes bacteria (coccidia) to build resistance and makes it necessary to rotate between flocks of different products or strategies to maintain control over the disease. Eli Lilly's *Maxiban* can also be potentially used instead of a chemical product in such a strategy.

26. According to the notifying party, producers often use a combination of these strategies and switch between them over time. In support of this view, the notifying party has analysed two datasets of Elanco customers, one for Central/Eastern European countries for 2006-2009 and one for Western Europe for the year 2010, which outline that a substantial

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9 According to the information provided by the notifying party, based on average price per chicken, vaccines on average cost […]EUR compared to […] EUR for chemical coccidiostats, […] EUR for ionophore coccidiostats and […] EUR for a combination product *Maxiban*.

10 E.g. the notifying party submits that certain customers in Spain and Italy (e.g. poultry producers Amadori and Guisona) use vaccines also for broiler production.

11 Short living chicken would typically live for up to 42 days, which can be split into three phases: the starter phase (first 14 days), the grower phase (days 14- 28) and the finisher stage (days 28-42). For meat turkey, respective growth stages are longer.

amount of switching between strategies can be observed. In view of this, the notifying party argues that customers would be prepared to switch between, for example ionophores and chemicals, in response to changes in relative prices.

27. Most of the respondents in the market investigation confirmed that rotation of programmes and various product brands is a common farming practice. Nearly half of respondents would not consider changing from chemicals to ionophores and vice versa in response to 5-10% permanent price increase. The reasons given by the respondents were based primarily on different product characteristics, price differences, and a necessity to rotate various coccidiostats in order to achieve effective coccidiosis control. However, this is not inconsistent with the notion that customers can use a combination of these products over the life-cycle of the bird.

28. The market investigation confirmed that due to the heightened risk of resistance, chemicals are usually only administered for a shorter period and in combination with ionophores.[12] Typically, a chemical would be used during the starter stage in a "chemical shuttle" strategy. Chemicals would also be used if there is a need to substantially decrease coccidiosis levels in a broiler house to reduce overall coccidial pressure or to treat farms with high resistant strains where ionophores are not effective enough ("full chemical" programme). Chemical coccidiostats are on average more expensive than ionophores.[13]

29. Ionophores can be used for much longer periods before resistance develops (up to several years) and help to build the immunity of a bird. Using ionophores also limits the need to rotate products between flocks and helps to fight separate bacterial infections. They are the most widely used drugs for coccidiosis prevention in broilers.

30. In view of these investigation results, the Commission examined whether it would be possible to price discriminate against a potential sub-group of customers that might strongly favour chemical coccidiostats in the starter phase, to the exclusion of other strategies.[14] For this, two conditions should be met: (i) it should be possible to identify clearly to which group an individual belongs at the moment of selling the relevant products to him, and (ii) trade among customers or arbitrage by third parties should not be feasible.[15]

31. In this regard, the parties provided convincing evidence in support of the view that the proposed transaction would not allow the combined entity to price discriminate against any such subgroup of customers, i.e. customers who choose to use only chemical-based coccidiostats. This is outlined in the following.

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12 In this group, only nicarbazin-based products develop relatively low resistance.

13 According to the information provided by the notifying party, based on average price per chicken, ionophore products on average cost […]EUR compared to […] EUR for chemical coccidiostats, and […] EUR for the combination product *Maxiban*.

14 As referred to in paragraphs 2-3 above, the Commission could initially not exclude that the proposed transaction raised competition concerns for a potential sub-group of customers that use a strategy with a chemical-based coccidiostat. On this basis, the parties submitted commitments at the same time as providing additional evidence which has allowed the Commission to conclude that the notified operation does not raise serious doubts as to its compatibility with the common market and EEA Agreement.

15 Commission Notice on the Definition of Relevant Market for the Purposes of Community Competition Law (OJ C 372, 9.12.97), para. 43.

32. Eli Lilly's combination product, *Maxiban*, includes a chemical component, nicarbazin. JAH markets one chemical-based coccidiostat *Clinacox* (diclaruzil).

33. The notifying party grouped the customers who currently choose to kill coccidia with chemical-based products into two categories: (a) those employing a "potentiated ionophore" strategy and thus using only *Maxiban* in both starter and grower stages, and (b) those employing a "chemical shuttle" strategy and thus using a chemical or *Maxiban* for the starter stage only.

34. The data submitted by the notifying party show that only 10% of the sales of *Maxiban* are used for the "chemical shuttle" strategy (i.e. starter phase), whereas nearly 90% of *Maxiban* is used as part of a "potentiated ionophore" strategy (i.e. starter and grower phases). Furthermore, only 32% of *Maxiban* sales are derived from the starter phase, where chemical products are used.[16]

35. In such circumstances and given the workings of the market, it is not possible for the notifying party to identify clearly to which group an individual customer belongs at the moment of selling the relevant product. In particular, the customers that use the "potentiated ionophore" strategy can use *Maxiban* for its killing bacteria characteristics, in which case chemicals are the closest alternative, or for its ionophore (immunity building) characteristics, in which case ionophores are the main alternative.

36. However, even if such segment of customers that favour chemical products would be identifiable,[17] any hypothetical increase in price would necessarily require an increase in price also for customers using *Maxiban* for its ionophore qualities, and would thus entail the risk of losing those customers to ionophores. Since the physical product is identical in all cases, it is also not possible to price *Maxiban* differently in the starter and grower phases. A single price decision must therefore be taken, taking into account the competitive pressure from other coccidiostats, i.e. both ionophores and chemicals.

37. In view of the above, the proposed transaction would not allow the notifying party to price discriminate against a sub-group of customers who might strongly prefer chemical-based coccidiostats. It can therefore be concluded that the market definition should not be limited to chemical-based products for the purposes of this case, and should also include ionophore-based products.[18]

38. Furthermore, it is to be noted that there are coccidiostats that can only be used in chicken species and are harmful for use in turkey birds (e.g. *Maxiban* of Eli Lilly and *Deccox* of Pfizer belong to this category). For the purposes of the present case, the market definition can be left open in this respect, as it does not change the competitive assessment.

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16 The proportion of *Maxiban* revenues from the starter stage is likely to diminish even further, given that since October 2010 *Maxiban* received approval for its use until the end of the bird's life.

17 This is in any case unlikely since these products are available to final customers from a number of third party intermediaries, such as pre-mixers, other wholesalers and feedmills who sell on the feed to the operators.

18 For the sake of completeness, it is to be noted that the notifying party would also not be able to charge a different price for a chemical coccidiostat when it is used during an outbreak situation (see paragraph 28 above) or in a full chemical programme. Even if such a group of customers would be identifiable, chemical coccidiostats would remain available from a variety of third party sources that also sell chemicals for other applications.

(ii) Geographic market

39. As indicated above, in previous Commission decisions, animal health markets have been considered to be national in scope. However, the notifying party has argued that with regard to the geographic market of coccidiostats for poultry, there is growing cross-border competition due to the presence of large multinational players and the existence of EU-wide authorisation procedures under Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition.[19]

40. Whether the relevant geographic market for coccidiostats for poultry is of a national scope or broader can be left open in this case as no concerns would arise under any possible definition.

(iii) Competitive assessment

41. Elanco sells two ionophore-based coccidiostats, marketed under the trademarks Elancoban (monesin) and Monteban (narasin) and a combination product Maxiban (nicarbazin and nasarin). JAH markets one chemical-based coccidiostat, Clinacox (diclaruzil). [One of the Parties] has […] entered into an […] distribution agreement […] for the distribution of a chemical-based coccidiostat, […] in the EEA. The Parties' products are off patent and they do not overlap on a molecule level.

42. According to the Parties' estimates, the proposed transaction would give rise to the following Group 1 markets: (i) anti-coccidial products for poultry in the EEA, Belgium, France, Poland, Portugal, and Spain; (ii) coccidiostats for poultry in the EEA, Belgium, the Czech Republic, France, Germany, Hungary, Italy, Poland, Portugal, Romania and Spain. Under both alternative market definitions, Group 2 markets would arise in the UK and the Netherlands.

43. In the Group 1 markets for anti-coccidial products for poultry, the Parties' combined market shares would range from [30-40] % to [50-60] %, with very small increments added by JAH ([0-5] %). In all of these cases, at least two strong competitors would remain: e.g. Alpharma (Pfizer), with market shares from [5-10]% to [20-30]%, and Huvepharma, with market shares from [10-20]% to [30-40]%. Intervet Schering-Plough would also have a strong presence on the market with coccidial vaccines ([5-10] %-[20-30] %). Several smaller players (i.e. Krka, Phibro, and Hipra) would also remain present in most of the national markets, with market shares of [0-5]%. In the UK and the Netherlands, the combined market share would be [50-60]%, but the increment resulting from the proposed transaction would remain below 1%. Each of the remaining main competitors (Alpharma, Huvepharma, Intervet Schering-Plough) would have market shares in the range of [5-10]-[10-20]%.

44. Similarly, in the Group 1 markets for coccidiostats (chemical and ionophore) for poultry, the Parties' combined market shares would range from [30-40] % to [60-70] %, with equally small increments added by JAH ([0-5] % (except for Romania, where the Parties' combined market share is [30-40]% with an increment of [5-10%]). In all of these cases, at least two strong competitors would remain: e.g. Alpharma (Pfizer), with market shares ranging between [5-10]% and [30-40]%, and Huvepharma, with market shares ranging

19 OJ L 268, of 18.10.2003, p.29.

between [10-20]% and [40-50]%. Two smaller players (i.e. Krka, Phibro) would also remain present in a majority of national markets, with market shares of [0-5]%. In the UK and the Netherlands, the combined market shares would exceed 70%, but the increment resulting from the proposed transaction would remain below 1%. Each of the remaining competitors (Alpharma, Huvepharma) would have market shares in the range of [5-10] – [10-20]%.

45. In addition, as outlined above, [one of the parties]has […] entered into a […] distribution agreement with a third party for the distribution of a chemical-based coccidiostat, *[…]* throughout the EEA. The projected sales of *[this product]* for 2011-2013 would, however, not exceed [0-5]% in any national market and the whole of the EEA under any alternative market definition.

46. For all these segmentations, the investigation has confirmed that the merged entity would face several credible competitors and that JAH's small presence/increment would not give the merged entity any unilateral power.

47. Based on the above, no competition concerns arise in the markets for (prophylactic) anti-coccidial products for poultry under any alternative market definition.

(3) Endoparasiticides and endectocides for production animals

(i) Product market

48. Parasiticides are agents or preparations used to control internal and/or external parasites which prevent them from infesting an animal. Endoparasiticides are used to control internal parasites while endectocides are used to control both internal and external parasites concurrently.

49. The Commission has considered in previous decisions that endoparasiticides and endectocides are part of the same product market,[20] although more recently it left the market definition open.[21]

50. With regard to species, the Commission has found that endoparasiticides/endectocides for production animals and endoparasiticides/endectocides for companion animals constitute separate product markets.[22]

51. The Parties submit that, in line with Commission precedents, endoparasiticides and endectocides belong to the same product market and that a distinction should be made between, on the one hand, endoparasiticides and endectocides for production animals and, on the other, endoparasiticides and endectocides for companion animals.

52. The Parties argue that a market sub-division within production animals by species (e.g. cattle, swine, sheep, goats) would not reflect competitive conditions as most endoparasiticides/endectocides for production animals are indicated for several species.

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20 M.885 *Merck/Rhone Poulenc-Merial*, decision of 2 July 1997, recital 42; M.4691 *Schering-Plough/Organon BioSciences*, decision of 11 October 2007.

21 M.5476 *Pfizer/Wyeth*, Decision of 17 July 2009.

22 M.737 *Ciba-Geigy/Sandoz*, decision of 17 July 1996; M.4691 *Schering Plough/Organon BioSciences*, decision of 11 October 2007.

53. The Parties finally contend that a market segmentation on the basis of the active ingredient or molecule on which endoparasiticides and endectocides for production animals are based also does not reflect actual competitive conditions.

54. With regard to whether endoparasiticides and endectocides belong to the same market or to two separate markets, the results of the market investigation were inconclusive. Some respondents considered that endoparasiticides and endectocides are indistinctively used as treatments against parasites and are generally substitutable as the primary focus for treatment is the control of internal parasites, for which both types of products are indicated. Other respondents submitted that these two types of products are neither substitutable nor indistinctively used as they have a different spectrum of activity (endectocides having a broader spectrum), duration of efficacy, prices and resistance levels and may be used at different times of the year.

55. On the other hand, a majority of respondents supported the Parties' view that endoparasiticides and endectocides for production animals belong to a separate product market from endoparasiticides and endectocides for horses. The main reasons given by respondents are the products' different methods of administration and the products' different formulations, although other reasons such as different dosage, different level of resistance developed by the animal, the products' compatibility with other compounds, the products' efficacy and the lack of studies were also invoked.

56. A majority of respondents also indicated that a sub-division of endoparasiticides/endectocides for production animals by species, or a segmentation of endoparasiticides/endectocides for production animals based on the product's active ingredient or molecule, would not be pertinent as this would not reflect demand patterns.

57. In this case, whether endoparasiticides and endectocides for production animals belong to the same or to separate product markets and whether or not the market/s for endoparasiticides/endectocides for production animals should be further sub-divided by species or segmented on the basis of the product's active ingredient or molecule can be left open as the proposed transaction does not give rise to serious doubts under any of these possible definitions.

(ii) Geographic market

58. As indicated above, the Commission has found in previous decisions that the geographic scope of animal health markets is national as these markets remain subject to national registration and market authorisation procedures.[23]

59. However, the Parties submit that there is a growing trend towards competition across national borders due to the introduction of pan-European registration procedures and the presence of large multinational players across the EEA.

60. A significant majority of respondents to the market investigation considered the market/s for endoparasiticides and endectocides for production animals to be national.

61. In this case, whether the relevant geographic market/s for endoparasiticides and endectocides for production animals is of a national scope or broader can be left open as

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23 See e.g. M.4691 *Schering-Plough/Organon BioSciences*, decision of 11 October 2007, paras. 42-45.

the proposed transaction does not give rise to serious doubts under any possible definition.

(iii) Competitive assessment

62. Within the segment of endoparasiticides and endectocides for production animals, the Parties' activities lead to potentially affected horizontal markets in Belgium and the UK.[24]

63. On a market including both endoparasiticides and endectocides for production animals, the Parties' combined market shares would be as follows: [30-40]% in Belgium (Eli Lilly [10-20]%, JAH [10-20]%), and [10-20]% in the UK (Eli Lilly [0-5]%, JAH [10-20]%).

64. On a market including only endoparasiticides for production animals, the Parties' combined market shares would be as follows: [30-40]% in Belgium (Eli Lilly [5-10]%, JAH [30-40]%), and less than [10-20]% in the UK (Eli Lilly [0-5]%, JAH [10-20]%).

65. On a market including only endectocides for production animals, the Parties' combined market shares would be as follows: [20-30]% in Belgium (Eli Lilly [10-20]%, JAH [5-10]%), and [10-20]% in the UK (Eli Lilly [5-10]%, JAH [5-10]%).

66. On a market for endoparasiticides and endectocides for production animals further segmented by species, the Parties estimate that their combined market shares would be as follows:

- on a hypothetical endoparasiticides/endectocides segment for sheep and cattle: [30-40]% in Belgium (Eli Lilly [20-30]%, JAH [10-20]%), and [10-20]% in the UK (Eli Lilly [5-10]%, JAH [5-10]%);

- on a hypothetical endoparasiticides segment for sheep and cattle: [5-10]% in Belgium (Eli Lilly [0-5]%, JAH [0-5]%), and [10-20]% in the UK (Eli Lilly [0-5]%, JAH [10-20]%);

- on a hypothetical endectocides segment for sheep and cattle: [30-40]% in Belgium (Eli Lilly [20-30]%, JAH [10-20]%), and [10-20]% in the UK (Eli Lilly [10-20]%, JAH [0-5]%).

67. On a market for endoparasiticides and endectocides for production animals segmented by the product's molecule, the Parties' activities would only overlap in the UK in respect of endoparasiticides based on the active ingredient *albendazole*.[25] On the basis of data provided by the market research companies CEESA and GfK, the Parties estimate that their combined share in a hypothetical albendazole segment for production animals in the UK would amount to approximately [10-20]%. Therefore, a market definition for endoparasiticides and endectocides for production animals segmented at molecule level would not give rise to an affected market.

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24 JAH sells endoparasiticides and endectocides for production animals under the following trademarks: *Flubenol, Flubenvet, Ovispec, Ripercol, Solubenol, Supaverm, Flukiver, Mebadown, Qualimec*. Eli Lilly sells endoparasiticides and endectocides for production animals under the following trademarks: *Valbazen, Dectomax*.

25 JAH's *Ovispec* and Eli Lilly's *ValbazenI*.

68. The Parties' combined market shares under the market definitions that lead to an affected market are all below 40%.

69. In addition, the market investigation confirmed that the Parties are not each other's closest competitors in either Belgium or the UK and that several credible competitors (including generic product manufacturers) will continue to exert in both countries a sufficient competitive constraint on the merged entity (Pfizer, Merial, Intervet/Schering Plough, Bayer, Norbrook, Novartis, Virbac, Ceva).

70. The market investigation also showed that Novartis recently entered the Belgian and UK markets with an endoparasiticide for sheep; that new products are being developed by originator producers; and that generic product manufacturers enter and leave the market regularly. In this connection, all of Eli Lilly's and JAH's products in endoparasiticides/endectocides for production animals are off patent.

71. A clear majority of respondents to the market investigation confirmed that customers (wholesalers, vets) usually have a dual or multiple sourcing policy for endoparasiticides and endectocides for production animals, and that customers could easily switch to a different supplier should a supplier decide to increase prices or otherwise deteriorate quality or delivery conditions as there are no significant switching costs (one respondent explained that the new supplier will often provide product-specific equipment as well as customer assistance).

72. The market investigation therefore revealed no substantiated competition concerns from either customers or competitors in connection with endoparasiticides and endectocides for production animals.

73. In view of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to endoparasiticides and endectocides for production animals.

(4) Endoparasiticides and endectocides for horses

(i) Product market

74. In *Pfizer/Wyeth*, the Commission considered an overall market comprising both endoparasiticides and endectocides for horses, whether administered externally or internally, either orally or by injection.[26]

75. The Parties agree with this product market definition.

76. The Parties also submit that a market segmentation on the basis of the active ingredient or molecule on which endoparasiticides and endectocides for horses are based would not reflect actual competitive conditions. In particular, the Parties contend that endoparasiticides for horses based on the active ingredient *pyrantel*, where their activities overlap in the UK,[27] compete vigorously and are interchangeable with

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26 M.5476 *Pfizer/Wyeth*, decision of 17 July 2009, para. 305.

27 JAH's *Exodus* and Eli Lilly's *Strongid*.

endoparasiticides and endectocides for horses based on other molecules. The Parties maintain that segmenting the market based on molecule would especially not reflect competitive conditions in respect of endoparasiticides for horses, where it is good veterinary practice to rotate between products with different molecules to overcome resistance problems.

77. As outlined in connection with endoparasiticides and endectocides for production animals, a majority of respondents supported the Parties' view that endoparasiticides and endectocides for horses belong to a separate product market from endoparasiticides and endectocides for production animals, but the results of the market investigation with regard to whether endoparasiticides and endectocides belong to one or two separate product markets were inconclusive.

78. In contrast, a clear majority of respondents indicated that a segmentation of the market for endoparasiticides for horses (the Parties' activities not overlapping with regard to endectocides for horses) based on the product's active ingredient or molecule would not be pertinent as it would not reflect demand patterns. Accordingly, most respondents stated that endoparasiticides for horses based on a given active ingredient (for example *pyrantel*) can be exchanged with endoparasiticides for horses based on other active ingredients, and that end-customers of endoparasiticides for horses (for example, vets) often (every 6 weeks to 2 months according to one respondent) rotate between products with different active ingredients to prevent the development of resistance.

79. In view of the above, a segmentation of the market for endoparasiticides for horses based on the product's active ingredient or molecule has not been supported by the results of the market investigation and is thus not considered in this case for the purposes of the competitive assessment of the proposed transaction.

80. With regard to whether endoparasiticides and endectocides for horses belong to the same or to separate product markets, in this case, this question can be left open as the proposed transaction does not give rise to serious doubts under any of these possible definitions.

(ii) Geographic market

81. As indicated above, the Commission has found in previous decisions that the geographic scope of animal health markets is national as these markets remain subject to national registration and market authorisation procedures.[28]

82. However, the Parties submit that there is a growing trend towards competition across national borders due to the introduction of pan-European registration procedures and the presence of large multinational players across the EEA.

83. A significant majority of respondents considered the market/s for endoparasiticides and endectocides for horses to be national.

84. In this case, whether the relevant geographic market/s for endoparasiticides and endectocides for horses is of a national scope or broader can be left open as the proposed

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28 See e.g. M.4691 *Schering-Plough/Organon BioSciences*, decision of 11 October 2007, paras. 42-45.

transaction does not give rise to serious doubts under any possible definition.

(iii) Competitive assessment

85. Within the segment of endoparasiticides and endectocides for horses, the Parties' activities overlap only in respect of endoparasiticides in the UK, where Eli Lilly sells an endoparasiticide product and JAH sells two endoparasiticide products and one endectocide product.[29]

86. According to the Parties, their combined market share on a market covering both endoparasiticides and endectocides for horses would be less than [5-10]%. The Parties' combined market share on a market covering only endoparasiticides for horses would be around [5-10]%.

87. Therefore, under the possible product market definitions in question, the proposed transaction would not give rise to affected markets.

88. The market investigation revealed no substantiated competition concerns from either customers or competitors in connection with endoparasiticides for horses.

89. In view of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to endoparasiticides for horses.

V. CONCLUSION

90. 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 Commission

(signed)
Joaquín ALMUNIA
Vice-President

29 JAH sells endoparasiticides and endectocides for horses under the following trademarks: *Exodus, Telmin, Maximec*. Eli Lilly sells endoparasiticides and endectocides for horses under the following trademark: *Strongid*.