



EUROPEAN COMMISSION  
DG Competition

***Case M.7982 - ABBOTT LABORATORIES / ALERE***

Only the English text is available and authentic.

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

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Decision on the implementation of remedies - Art. 6(1)(b) in  
conjunction with 6(2) - Purchaser approval

Date: 29.9.2017



Brussels, 29.9.2017  
C(2017) 6721 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

**Subject: Case M.7982 – Abbott/Alere**

**Approval of Siemens as purchaser of the EPOC Divestment Business following your Reasoned Proposal of 28 July 2017 and the Trustee's Reasoned Opinion of 25 September 2017**

Dear Sir/Madam,

**I. FACTS AND PROCEDURE**

1. By decision of 25 January 2017 (the "Decision") based on Article 6(1)(b) and Article 6(2) of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the 'EC Merger Regulation'), the Commission declared the operation by which Abbott Laboratories ("Abbott", US), acquired within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Alere Inc. ("Alere", US) compatible with the internal market and the EEA Agreement, subject to conditions and obligations (the "Commitments").
2. In its Decision, the Commission concluded that the acquisition of Alere by Abbott raised serious doubts as to its compatibility with the internal market, in the EEA in general and in several EEA countries in particular, in relation to (i) markets for *in vitro* diagnostics (IVD) point-of-care (POC) blood gas systems for tests in human and animal health, where Abbott's i-Stat and Alere's EPOC were closely competing in the overall market for IVD POC blood gas systems and the only two systems to be handheld; (ii) markets for IVD POC cardiac marker systems, where Abbott's i-Stat and Alere's Triage were closely competing systems; and (iii) markets for IVD laboratory immunochemistry testing, where Abbott's takeover of the pre-existing

manufacturing agreement between Alere and Danaher Corporation ("Danaher"), a competitor of Abbott in this market, could result in Danaher's foreclosure.

3. The Commitments provide that the following Alere businesses shall be divested on a worldwide basis: (i) Alere's EPOC business (the "EPOC Divestment Business"); (ii) Alere's Triage business (the "Triage Divestment Business"); and Alere's commercialisation of BNP assays (the "BC Commercialisation Divestment Business"); together referred to as the "Divestment Businesses".
4. The present decision is limited to the proposal for the acquisition of the EPOC Divestment Business by Siemens AG ("Siemens", Germany) and is adopted in parallel to the decision limited to the proposal for the acquisition of the Triage Divestment Business and the BC Commercialisation Divestment Business by Quidel Corporation ("Quidel", USA).

#### **A. Content of the Commitments**

5. Under Section B of the Commitments, Abbott commits to divest, or procure the divestiture of the Divestment Businesses within [confidential term of the First Divestiture Period] from the adoption of the Decision ("First Divestiture Period") to one or more purchasers fulfilling the criteria set out in Section D of the Commitments, namely a) independence from Abbott; b) established presence, including distribution and sales capabilities, in the IVD sector in the EEA with a geographic footprint comparable to Alere prior to the Concentration; c) financial resources, proven expertise and incentive to maintain and develop the Divestment Businesses as a viable and active competitive force; d) absence of *prima facie* competition concerns; and on terms of sale approved by the Commission in accordance with the procedure described in paragraphs 19 and 20 of the Commitments.
6. Paragraph 19 of the Commitments provides that the proposed concentration (i.e. Abbott's acquisition of control over Alere) shall not be implemented before Abbott has entered into a final binding sale and purchase agreement for the sale of the Divestment Businesses and the Commission has approved the purchasers and the terms of sale (a so-called upfront buyer clause).
7. Paragraph 20 of the Commitments provides that, in case Abbott does not propose to divest all Divestment Businesses to a single purchaser, the Commission will take the decision approving the proposed purchasers only after having assessed the complete information related to the proposed purchasers of the EPOC Divestment Business, the Triage Divestment Business and the BC Commercialisation Divestment Business, and all agreements concluded in relation to those divestments.
8. The Commitments also provide for a Monitoring Trustee to monitor the implementation of the Commitments. On 17 February 2017 Abbott proposed ING Bank N.V. London Branch ("the Trustee"), which has been approved by the Commission as a suitable Monitoring Trustee on 20 February 2017.

#### ***EPOC Divestment Business***

9. The EPOC Divestment Business, described in more details in Schedule A of the Commitments, consists of the EPOC (Enterprise Point of Care) Blood Analysis

System ("EPOC System"). It includes two leased buildings in Ottawa, Canada, occupied and operated by Epocal Inc., a company organised under the laws of Canada and a wholly owned subsidiary of Alere Inc ("Epocal"). Its registered office is at 2060 Walkley Road Ottawa, ON K1G 3P5 Canada.

10. The EPOC Divestment Business includes the global manufacturing, development and commercialisation of:

- a) the EPOC BGEM Test Card for human and for veterinary use, including all related pipeline products;
- b) the EPOC Reader for human and for veterinary use, including all related pipeline products;
- c) the EPOC Host 2 Mobile Computer for human and for veterinary use, including all related pipeline products.

The marketed and pipeline products listed above comprise all analysers and reagents/tests sold (or in development) belonging to the EPOC System.

11. The EPOC Divestment Business also includes:

- a) the following main tangible assets used for the production and development of the EPOC System, in particular the EPOC manufacturing and R&D facility and equipment, including:
  - i. EPOC assembly lines and equipment;
  - ii. Spare parts for equipment and assembly lines
  - iii. Machinery and equipment specific to EPOC;
  - iv. Production room and room controls (HVAC);
  - v. R&D and lab equipment;
  - vi. Computers / office equipment;
  - vii. Inventories (raw material inventory, WIP, EPOC specific);
- b) the following main intangible assets:
  - i. all patents owned by Alere that are solely or predominantly used for the EPOC System, including the ones owned by Epocal listed in Table 2 of Schedule A;
  - ii. perpetual, irrevocable, assignable, sub-licensable royalty free licenses will be granted to the Purchaser for any patents related to the EPOC System but which are not solely or predominantly used for the EPOC System;
  - iii. licenses and rights in intellectual property arising under contracts to which Alere is a party for the manufacture and development of the EPOC System (subject to obtaining all relevant third party consents) ;

- iv. all necessary trademarks relating to the EPOC Divestment Business, except "Alere" for which a license and/or right to use the trademark will be granted for as long as needed to avoid supply disruption to the divestment business;
  - v. all trade secrets, confidential know-how, confidential customer data, or other confidential information and certain other intellectual property used exclusively or predominantly in the EPOC Divestment Business;
  - vi. co-ownership of an undivided interest (with Alere and its Affiliated Undertakings) in trade secrets, confidential know-how, confidential customer data, or other confidential information and other intellectual property used both in the EPOC Divestment Business and in other businesses of Alere and its Affiliated Undertakings, to the extent used in the EPOC Divestment Business;
- c) to the extent they can transfer by law all necessary regulatory clearances and authorisations;
  - d) all customer contracts, lists, information and history;
  - e) all inventories, including raw materials, works in process, semi-finished and finished products, stores, replacement and spare parts, packaging and labelling materials, operating supplies and inventory on consignment, in transit or deposited in a warehouse, in each case to the extent used in the EPOC Divestment Business,
  - f) all advertising, marketing, training and promotional materials, books, records, files, tax records, customers lists and history used exclusively or predominantly in the EPOC Divestment Business, and co-ownership of an undivided interest of all other books, records, files, tax records, customers lists and history to the extent related to the EPOC Divestment Business;
  - g) all supply contracts, the building lease contract, all third party distribution contracts, all manufacturing, packaging and R&D agreements and all other relevant contracts for the viability of the EPOC Divestment Business to the extent related to EPOC (subject to obtaining all relevant third party consents);
  - h) personnel necessary for the continued viability and competitiveness of the EPOC Divestment Business, including, but not necessarily limited to, the personnel listed in Table 3 of Schedule A;
  - i) transfer of any pipeline products (including the ones listed in the Form RM) predominantly relating to the EPOC System, and right to access other pipeline products which are intended to be used in relation to EPOC System if any.

12. The Commitments provide that if there is any asset or personnel which is not covered by Schedule A of the Commitments but which is both used (exclusively or not) in the EPOC Divestment Business and necessary for the continued viability and

competitiveness of the EPOC Divestment Business, that asset, or personnel, or adequate substitute will be offered to the purchaser.

13. In addition, the EPOC Divestment Business includes the benefit, for a transitional period of up to two years after Closing and on terms and conditions equivalent to those at present afforded to the EPOC Divestment Business, of all current arrangements under which Alere or its Affiliated Undertakings supply products or services to the EPOC Divestment Business, as detailed in Schedule A, unless otherwise agreed with the Purchaser.
14. The Commitments also provide that strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (e.g. product roadmaps) will not be shared with, or passed on to, anyone outside the EPOC Divestment Business operations.

## **B. Reasoned Proposal**

15. Abbott signed a Sale and Purchase Agreement with Quidel in respect of the sale and divestiture of the Triage Divestment Business and the BC Commercialisation Divestment Business and a Sale and Purchase Agreement with Siemens in respect to the sale and divestiture of the EPOC Divestment Business on 15 and 21 July 2017 respectively. As indicated above, the present decision is limited to the assessment of Siemens as a suitable purchaser of the EPOC Divestment Business.
16. In its reasoned proposal of 28 July 2017 (the "Reasoned Proposal"), Abbott proposed Siemens as the purchaser of the EPOC Divestment Business for approval by the Commission and submitted a proposed Sale and Purchase Agreement as well as other related agreements (the "Proposed EPOC Agreement").
17. On 25 September 2017, the Trustee submitted a reasoned opinion (the "EPOC Reasoned Opinion") with an assessment of Siemens' suitability as a purchaser for the EPOC Divestment Business and confirmed that Siemens fulfils the purchaser requirements set out in section D of the Commitments. In this assessment, the Trustee also indicated that, on the basis of the Proposed EPOC Agreement, the EPOC Divestment Business would be sold in a manner consistent with the Commitments.

## **II. ASSESSMENT OF THE PROPOSAL**

### **A. Description of the purchaser**

18. Siemens is a German conglomerate headquartered in Munich. Siemens is listed on the Frankfurt Stock Exchange and has a market capitalisation of approximately EUR 98.2 billion as at 2 August 2017. It employs more than 350 000 employees and generated revenue of EUR 79.6 billion worldwide. Siemens has a presence in over 200 countries around the world and is the largest industrial manufacturing company in Europe. It is a leading supplier of systems for power generation, transmission, automation, rail transportation and medical technology.
19. Through its separately managed division Healthineers, Siemens is an established player in the in vitro diagnostics ("IVD") sector. The point-of-care ("POC")

Diagnostics business area of Siemens, active in the EEA, develops, manufactures and markets POC IVD products and services for use by healthcare professionals in hospitals and clinics. With this respect, Siemens designs, manufactures and markets the RAPIDLab and RAPIDPoint product series in the EEA and is also active in the narrower segment of POC IVD for blood gas testing.

20. The market investigation carried out by the Commission before the adoption of the Decision showed that Siemens is one of the major actors active in the POC IVD area for blood gas testing. However, its analysers are benchtop POC analysers, as opposed to Alere's EPOC or Abbott's i-STAT which are handheld. Therefore the activities of Siemens and of the EPOC Divestment Business are largely complementary. The respective market positions of Siemens and the EPOC Divestment Business, as well as the competitive effects of the acquisition of the EPOC Divestment Business by Siemens are presented in more detail in section B, paragraph (d) below.

## **B. Purchaser criteria**

21. In order to be approved by the Commission, the Purchaser must fulfil the following criteria<sup>1</sup>:

- a) be independent of and unconnected to Abbot and Alere (together "the Parties"), this being assessed having regard to the situation following the divestiture;
- b) have an established presence, including distribution and sales capabilities, in the IVD sector in the EEA with a geographic footprint comparable to Alere prior to the concentration;
- c) have the financial resources, proven expertise and incentive to maintain and develop the EPOC Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
- d) The acquisition of the EPOC Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the EPOC Divestment Business. In addition, the Purchaser must show to the Commission satisfactory evidence that it has obtained the consents of any critical intellectual property rights holders for the transfer of the relevant licenses and/or use of the relevant other IP rights.

### **a. Independence from the Parties**

22. In its EPOC Reasoned Opinion, the Trustee analysed information provided by Siemens and the Parties and submitted that there are no equity interests, cross-shareholdings, corporate links and common board directorships between each of Abbott and Alere and Siemens (or *vice versa*).

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<sup>1</sup> Commitments, paragraph 18.

23. Siemens and the Parties have some commercial links. As these links are very limited and not at a level that gives cause for concern (less than [...]% of the Parties' or Siemens' sales), it can be concluded that there is no material dependency between the Parties and Siemens (or *vice versa*). Moreover, this lack of material dependency between the Parties and Siemens excludes any risk that either could use any of these economic links as a credible threat of retaliation in order to coordinate in the market for handheld IVD POC for blood gas testing.
24. A framework transition services agreement was entered into by Abbott and Siemens.<sup>2</sup> According to this agreement, Abbott shall provide Siemens with financial and administrative support, IT services and supply chain and distribution arrangements for up to [Confidential details of Siemens' contractual agreements].
25. The Trustee submitted that the scope of the transition services agreement was determined with the help of the Hold Separate Manager ("HSM") and that Siemens has agreed to undertake as of the completion of the divestment any services excluded from that agreement.
26. Based on all available information and also having regard to the Trustee EPOC Reasoned Opinion, the Commission concludes that Siemens is independent and unconnected to Abbott and Alere.

**b. Established presence in the IVD sector in the EEA**

27. In its EPOC Reasoned Opinion, the Trustee analysed information provided by Siemens and the Parties and submitted that Siemens already has an established presence, including distribution and sales capabilities in the IVD sector in the EEA. More particularly, it designs, manufactures and markets the RapidLab and RapidPoint range of blood gas testing systems in the EEA through its POC Diagnostics business division.
28. The Trustee also found Siemens' geographic footprint in the EEA to be significantly larger than that of Alere prior to the acquisition by Abbott. Siemens' POC Diagnostics business unit currently employs more than [...] dedicated sales staff located in the EEA (in a total of [...] countries), as well as a further more than [...] full time equivalent (FTE) personnel in the EEA covering [...] further countries. In countries where it does not have a direct sales presence, Siemens uses distributors to sell its products. By comparison, Alere employs a total of [...] FTE to assist the EPOC Divestment Business in the EEA in [...] countries. Siemens' POC Diagnostics business has a [...] sales presence in all of the countries where Alere is present in the EEA other than in [...] country, where it currently uses distributors to sell its products.
29. Based on all available information and also having regard to the Trustee EPOC Reasoned Opinion, the Commission concludes that Siemens has both an established presence, including distribution and sales capabilities in the IVD sector, and a geographic footprint comparable to that of Alere pre-transaction in the EEA.

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<sup>2</sup> Exhibit F to the SPA, concluded in light of paragraph 7 of the Commitments.



**c. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor**

30. In its EPOC Reasoned Opinion, the Trustee analysed information provided by Siemens and the Parties and submitted that Siemens can easily finance the purchase price of USD [...] million for the acquisition of the EPOC Divestment Business from Alere [Business secrets relating to Siemens' business plan].<sup>3</sup>
31. Siemens is an established player with proven expertise in the designing, manufacturing and selling products in the IVD POC sector. In particular, it has well established manufacturing capabilities in Europe and North America and a dedicated worldwide sales network for its POC Diagnostics.
32. Concerning Siemens' incentive to maintain and develop the EPOC Divestment Business as a viable and active competitor, the Trustee notes that the divestment will enable Siemens to provide customers with a full suite of blood gas testing systems, including handheld, benchtop and laboratory analysers. Siemens has developed a detailed business plan for the EPOC Divestment Business which presents [Business secrets relating to Siemens' business plan].
33. Concerning sales of the EPOC Divestment Business in the veterinary sector in which Siemens is currently not active, Siemens informed about its intention to maintain and safeguard all existing sales and to [Business secrets relating to Siemens' business plan].<sup>4</sup>
34. In line with the Commitments<sup>5</sup>, the SPA provides that Siemens is permitted to approach Alere personnel globally. Although Siemens appears to have an extensive sales force in all of the major countries of distribution of the EPOC Divestment Business, and especially in Europe, Siemens intends to offer employment to up to [Confidential details and business secrets relating to Siemens' future employee structure and business plan] and to [Confidential details and business secrets relating to Siemens' future employee structure and business plan] who are currently employed by Alere.
35. Based on all available information and also having regard to the Trustee EPOC Reasoned Opinion, the Commission concludes that Siemens has all the necessary financial resources and technical expertise to subsequently operate and further grow the Divestment Business.

**d. Absence of *prima facie* competition concerns**

*Horizontal overlaps*

36. In its Decision, the Commission concluded that there are separate product markets for POC IVD blood gas systems for (i) human and (ii) animal health, with a possible segmentation between benchtop and portable (handheld) systems. POC IVD blood gas systems comprise analysers, reagents and accessories for the purpose of conducting clinical tests outside the human or animal body using blood or other samples.

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<sup>3</sup> [Business secrets relating to Siemens' business plan]

<sup>4</sup> [Business secrets relating to Siemens' business plan].

<sup>5</sup> Paragraph 4 of Schedule A in the Commitments.

37. While it recognised that a distinction between portable and non-portable POC systems is relevant in particular for blood gas testing, the Commission left the precise product market definition open for both the human and animal segments. More specifically, the Commission did not conclude whether the relevant product markets relate to all POC IVD systems for blood gas testing or should be restricted to handheld POC IVD systems for blood gas testing.
38. The relevant geographic markets for POC IVD systems considered in this decision were found in the Commission's Decision to be national in scope.
- (i) *Human health*
39. In the POC IVD sector for blood gas testing, Siemens's product portfolio is limited to benchtop analysers, that cannot easily be deployed at the patient bedside and that are generally used in laboratory settings, in clinics or in nurse stations.
40. This is in line with the findings in the Decision, which considers that Alere's EPOC and Abbott's iSTAT are the two most portable handheld POC IVD systems for blood gas testing.<sup>6</sup> The proposed acquisition of the EPOC Divestment Business by Siemens therefore does not give rise to *prima facie* competition concerns in relation to the narrower market restricted to handheld IVD POC systems for blood gas testing.
41. On the overall market for POC IVD systems for blood gas testing which includes benchtop and handheld systems, Siemens' RapidLab and RapidPoint systems currently compete with Alere's EPOC.
42. To assess the competitors' positions on the market for POC IVD blood gas systems in human health, market shares can be estimated either based on reagent sales or in terms of the installed base of analysers. As done in the Decision, both sets of data are used as a proxy to evaluate the Parties' market position because their POC systems are closed systems.<sup>7</sup>
43. The proposed acquisition of the EPOC Divestment Business by Siemens does not give rise to any horizontally affected market in the EEA when market shares are estimated based on reagent sales data. Based on 2016 data, the combination of Siemens and the EPOC Divestment Business leads to market shares below 15% in all EEA countries apart from the Czech Republic ([10-20]%) and Norway ([10-20]%).
44. Under the alternative approach of market shares estimated based on installed base of analysers, the proposed acquisition by Siemens of the EPOC Divestment Business gives rise to five horizontally affected markets (Austria, Belgium, Germany, Poland and Romania). None of these affected market, however, gives rise to *prima facie* competition concerns, either because of the limited combined market share ([20-30]% in Austria, [20-30]% in Germany and [20-30]% in Romania) or because of the limited increment brought by the transaction ([0-5]% in Belgium and [0-5]% in Poland) reflected in the limited increment of the Herfindahl-Hirschman

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<sup>6</sup> Table 2 and paragraphs 87 and 90 of the Decision.

<sup>7</sup> Paragraph 84 of the Decision.

Index (HHI) (below 150). The relevant market shares for each horizontally affected market can be found in Table 1.

**Table 1 – Market shares of main competitors active in POC IVD blood gas systems estimated on installed base of analysers in 2016<sup>8</sup>**

Country	Market size (units)	Siemens	Alere	Combined	Abbott	Danaher	Eschweiler	IL	ITC	Nova Biomedical	OPTI Medical	Roche
Austria	[1000-2000]	[10-20]%	[5-10]%	<b>[20-30]%</b>	[5-10]%	[30-40]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[20-30]%
Belgium	[1000-2000]	[20-30]%	[0-5]%	<b>[20-30]%</b>	[0-5]%	[30-40]%	[0-5]%	[10-20]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
Germany	[10000-20000]	[10-20]%	[5-10]%	<b>[20-30]%</b>	[0-5]%	[30-40]%	[0-5]%	[20-30]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%
Poland	[1000-2000]	[20-30]%	[0-5]%	<b>[30-40]%</b>	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[5-10]%	[0-5]%	[10-20]%
Romania	[1000-2000]	[10-20]%	[5-10]%	<b>[20-30]%</b>	[0-5]%	[20-30]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%

Source: Abbott

45. In Austria, the combination of Siemens with the EPOC Divestment Business will become, in terms of installed base, the third largest player in the market with a [20-30]% market share, behind Danaher ([30-40]%) and Roche ([20-30]%), and will continue to face competition from IL/Werfen ([10-20]%) and Abbott ([5-10]%).<sup>9</sup>

46. In Belgium, the limited increment brought by the EPOC Divestment Business ([0-5]%) will not alter Siemens' second largest position in the market ([20-30] post-transaction), behind Danaher ([30-40]%). The combination of Siemens with the EPOC Divestment Business will continue to face well-established competition from several players such as IL/Werfen ([10-20]%), Roche ([5-10]%), Nova Biomedical ([5-10]%) and Abbott ([0-5]%). It can also be noted that the post-merger HHI of [>2000] is above 2000 and the associated delta of [<150] is below 150, which, according to the Horizontal Merger Guidelines<sup>10</sup>, illustrates the fact that horizontal competition concerns are unlikely to arise, unless special circumstances would be present.<sup>11</sup> None of these exceptional circumstances, however, are present in Belgium.

47. In Germany, the proposed acquisition by Siemens of the EPOC Divestment Business will create the second largest player in the market with a combined market share of [20-30]%, behind Danaher ([30-40]%) and slightly before IL/Werfen ([20-30]%). The combined entity will continue to face competition from other well-established competitors such as Roche ([10-20]%) or Abbott ([0-5]%).<sup>12</sup>

<sup>8</sup> The Trustee notes certain changes between the market share data provided by Abbott and Alere in Annex 7.27 of the Form CO and reflected in Table 2 of the Decision and data provided in Table 1 of the present decision. In this respect, Abbott has informed the Trustee that the updated estimates (i) have been further refined since the Commission's investigation, (ii) incorporate actual information received by Siemens and (iii) reflect the market situation in 2016 (and not 2015 as in the previous data set provided to the Commission).

<sup>9</sup> In Austria, the post-merger HHI is [>2000] and the associated delta is [>150].

<sup>10</sup> "Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings", OJ C 31, 5.2.2004 at p. 5.

<sup>11</sup> Paragraph 20 of the Horizontal Merger Guidelines.

<sup>12</sup> In Germany, the post-merger HHI is [>2000] and the associated delta is [>150].

48. In Poland, Siemens currently is the largest player in the market and will benefit from the limited increment of [0-5]% brought by the EPOC Divestment Business to reach a [30-40]% market share based on installed base of analysers. Other notable players include Danaher ([10-20]%), Roche ([10-20]%) and IL/Werfen ([10-20]%). It can be noted that the post-merger HHI of [<2000] is below 2000 and the associated delta of [<250] is below 250, which, according to the Horizontal Merger Guidelines, illustrates the fact that horizontal competition concerns are unlikely to arise, unless special circumstances would be present. None of these exceptional circumstances, however, are present in Poland.
49. In Romania, the proposed acquisition by Siemens of the EPOC Divestment Business will create the second largest player in the market with a combined market share of [20-30]%, behind Danaher ([20-30]%) and slightly ahead of IL/Werfen ([10-20]%). The combined entity will also continue to face competition from other notable competitors such as Roche ([10-20]%) and Nova Biomedical ([10-20]%). The post-merger HHI of [<2000] is below 2000 and the associated delta of [<250] is below 250, which, according to the Horizontal Merger Guidelines, illustrates the fact that horizontal competition concerns are unlikely to arise, unless special circumstances would be present. None of these exceptional circumstances, however, are present in Romania.

(ii) *Animal health*

50. Siemens is not present in IVD POC animal health and the proposed acquisition by Siemens of the EPOC Divestment Business does not give rise to *prima facie* competition concerns on either possible product market definitions for all IVD POC systems for animal blood gas testing or for portable IVD POC systems for animal blood gas testing.

*Vertical relationships*

51. The proposed acquisition by Siemens of the EPOC Divestment Business does not give rise to any vertical link, since Siemens' systems as well as EPOC are closed systems. More particularly, assays designed for use on the EPOC cannot be used on Siemens RapidLab or RapidPoint analysers and *vice versa*.

*Conglomerate effects*

52. The Commission has not identified any closely related neighbouring market to the EPOC Divestment Business in which Siemens' market shares could give rise to *prima facie* competition concerns in relation to acquisition of the EPOC Divestment Business.

*Consents of critical IP rights holders for the transfer of relevant licences*

53. According to the Trustee and based on the information available to the Commission, the IP rights used in the EPOC Divestment Business consist of patents and know-how owned by Alere, none of which is subject to third-party consent requirements.

*Other jurisdictions where the acquisition of EPOC by Siemens is notifiable*

54. Regulatory approval for the acquisition by Siemens of the EPOC Divestment Business is required in Austria, Spain, Canada and Brazil.

55. Clearance was obtained in Austria (15 September 2017) and Brazil (initial clearance on 1 September 2017 and expiry of waiting period on 18 September 2017). Siemens expects clearance in Spain by the end of a phase I review (deadline on 11 October 2017) and proceedings are ongoing in Canada, where Abbott expects clearance at the same time or soon after the Canadian Competition Bureau clears the concentration between Abbott and Alere.

#### *Conclusion*

56. The Trustee submits that it has not identified any material *prima facie* competition concerns resulting from the proposed acquisition of the EPOC Divestment Business by Siemens.

57. Based on all available information and also having regard to the Trustee EPOC Reasoned Opinion, the Commission concludes that Siemens is neither likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and is expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the EPOC Divestment Business.

58. This *prima facie* assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by Siemens by a competent competition authority under applicable merger control rules.

### **III. ASSESSMENT OF THE PROPOSED EPOC AGREEMENT**

59. The Proposed EPOC Agreement between Abbott and Siemens was signed on 21 July 2017 and sets forth Siemens' irrevocable commitment to purchase the EPOC Divestment Business on the terms and conditions as set forth in the Sale and Purchase Agreement.

60. The Proposed EPOC Agreement is fully in line with the scope of the EPOC Divestment Business as defined in the Commitments. The Commitments also contain elements that are at the option of the purchaser and that have been required by Siemens. These include [Confidential details and business secrets relating to Siemens' future employee structure and business plan].

61. The Trustee has reviewed and provided an assessment of the Proposed EPOC Agreement and submits that it fulfils the requirements of the Commitments and that the EPOC Divestment Business is sold in a manner consistent with the Commitments.

62. Based on all available information and also having regard to the Trustee Reasoned Opinion the Commission concludes that the Divestment Business is sold in a manner that is consistent with the Commitments.

### **IV. CONCLUSION**

63. On the basis of the above assessment, the Commission approves Siemens as a suitable purchaser for the above-mentioned reasons.

64. Moreover, on the basis of the Proposed EPOC Agreement, the Commission further concludes that the EPOC Divestment Business is being sold in a manner consistent with the Commitments.
65. This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed EPOC Agreement. This decision does not constitute a confirmation that Abbott has complied with their Commitments.
66. This decision is based on paragraph 19 of the Commitments attached to the Commission Decision.

*For the Commission*

*(signed)*  
*Johannes LAITENBERGER*  
*Director-General*