

*Case No IV/M.885 -  
MERCK / RHÔNE-  
POULENC - MERIAL*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

---

Article 6(1)(b) NON-OPPOSITION

Date: 002/07/1997

*Also available in the CELEX database*

*Document No 397M0885*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.07.1997

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)B DECISION

Dear Sirs,

**Subject: Case No IV/M.885 - Merck/Rhône-Poulenc/Merial**

Notification of 02.06.1997 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 2 June 97, the Commission received a notification of a proposed concentration, pursuant to Article 4 of Council Regulation (EEC) No 4064/89, by which Merck & CO. Inc. ("Merck") and Rhône-Poulenc S.A. ("RP") acquire within the meaning of Article 3 (1)(b) of the Council Regulation joint control of a newly created company, to be called Merial, to which the parties will contribute their existing world-wide animal health and poultry genetics businesses.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89, and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement

**I. THE PARTIES**

3. Merck is a US group which is active in the business of researching, discovering, developing, manufacturing and marketing products for use in human and veterinary medicine and products for agricultural crop protection.
4. RP is a French group which is active in the research, development, manufacture and sale of products in the chemical and agro chemical, fibre and polymers, and human health sectors.

## **II. THE OPERATION**

5. RP will contribute its subsidiary Rhône-Mérieux , which specialises in the animal health industry, and a subsidiary of Rhône-Mérieux, called Institut de Sélection animale (“ISA”), which specialises in poultry genetics to the new joint venture Merial. Merck’s contribution will be its animal health and poultry genetics businesses which are part of the Merck AgVet Division. Currently, the Merck AgVet Division is active in animal health, poultry genetics and agrochemicals fields. The agro-chemicals activity will not be contributed to Merial but will be sold to a third party. Merck’s poultry genetics business consists of British United Turkeys Limited and Hubbard Farms Inc. which operate under the umbrella of the Hubbard Group. These subsidiaries will be transferred to Merial.

## **III. CONCENTRATION**

### **a) Joint control**

6. Merial will be a stand-alone, 50-50 joint venture of perpetual duration, which will be jointly controlled by Merck and RP. Article IV of the Master Agreement provides a system of governance which will include in particular a “Members’ Meeting” and a Board of directors. The Members’ Meeting, which will represent directly the two parent company shareholders with an equal weight, will take decisions or resolutions in certain matters, such as the approval of the annual financial statements, any merger, joint venture, partnership, acquisition or reorganisation involving Merial; any decision will require unanimous agreement.
7. The Board of directors will have 6 members, 3 representatives being appointed by each member. The Board will have responsibility for approving the annual budget and the business plan and surveying their implementation by the executive officers, for determining the strategy of Merial, for nominating or removing executive officers with the exception of the Executive Chairman who will be appointed by Merck, then by RP by turns. Decisions will be taken by unanimity.
8. Overall these are strategic decisions affecting the business policy of Merial, and as such, they confer to Merck and RP joint control over the joint venture.

### **b) Full function joint venture**

9. The joint venture, Merial will be active in four distinct areas, poultry genetics, animal vaccines, non-parasitic pharmaceutical animal health products and parasitic animal health products. On the basis of the parties’ 1996 world-wide sales, the projected turnover of Merial will be ECU 1358 million, of which approximately 80% and 20% will be derived from animal health business and poultry genetics respectively.

10. The relative importance of each of these areas is shown in the table below.

ACTIVITIES	WORLD-WIDE TURNOVER ECU million	% of the JV's world-wide turnover	E.C. TURNOVER ECU million	% of the JV's Community turnover
Poultry genetics	[...] <sup>1</sup>	[...] <sup>1</sup> %	[...] <sup>1</sup>	[...] <sup>1</sup> %
Animal vaccines	[...] <sup>1</sup>	[...] <sup>1</sup> %	[...] <sup>1</sup>	[...] <sup>1</sup> %
Pharmaceuticals (excluding anti-parasitics)	[...] <sup>1</sup>	[...] <sup>1</sup> %		
Animal antiparasitics	[...] <sup>1</sup>	[...] <sup>1</sup> %	[...] <sup>1</sup>	[...] <sup>1</sup> %
TOTAL	1359	100% World	[...] <sup>1</sup>	100% EC

11. With regard to poultry genetics the parents will contribute to the joint venture all of their activities relating to this operation. Merial will therefore have its own plant , equipment, employees and intellectual property rights. It will carry out its own research and development and will not depend upon either of its parents for any supplies or services.
12. Similarly, as far as animal vaccines and non-parasitic animal health products are concerned, RP will contribute all its activities in these fields. Merck has none. The joint venture will have all the resources it needs to carry on the business.
13. With regard to anti-parasitic products RP will transfer all the patents, trademarks and product registrations relating to its antiparasitic products with the exception of certain patents for fipronil which is an active ingredient. These patents will be licensed for animal use until their expiry. RP will retain ownership of the fipronil product patent rights and will continue to manufacture the bulk chemical itself. Certain process patents relating to different uses of fipronil will be transferred to the joint venture. The formulating, finishing and packaging of products based on fipronil will be carried out by Merial.
14. Merck will contribute its sales and marketing division for these anti-parasitic products. However it will carry out the manufacture of the active ingredients (essentially avermectin in bulk) and the formulation, finishing and packaging of the finished products under supply agreements for varying periods. Merck will retain the patent rights to avermectin, which also has applications in the treatment of humans and to the other molecules used in this sector.
15. Merial will be granted licenses for animal health use of Merck's patents until their expiry. These licenses will be royalty free, exclusive and sub-licensable.

---

<sup>1</sup> Business Secrets - deleted for publication

Merck will transfer all relevant (animal health) trademarks and product registrations to the joint venture. Merck will provide Merial with finished products ready for sale in the first five years of the joint venture's life (finished products made on the basis of avermectin are called ivermectins).

16. Merial and its parents will enter into [...] supply agreements for a number of products. The agreements will have durations varying from [...] years to [...]<sup>1</sup>. The products concerned are currently protected by patents, so that for those products for which Merial has not been licensed to produce, the parent companies or their licensees are the only sources of supply. Those supply contracts for durations exceeding [...] years have provisions allowing Merial to terminate them at [...] yearly intervals on [...] years notice.
17. For the Merck products Merial is an exclusive distributor and because it has the power to determine the prices at which the products are sold and is not required to purchase any fixed quantities from Merck it cannot be regarded simply as its parent's agent. The value added (or margin) in the distribution operation generally exceeds [...] giving the joint venture ample scope to adjust prices free from the influence of its parent.
18. In relation to the supply of bulk chemicals avermectin from Merck and fipronil and very minor quantities of four other bulk chemicals from RP the costs of purchasing these materials assuming that the joint venture decides to undertake all the formulating, finishing and packaging operations itself will account [...] of the joint venture's total revenues, or less than [...] of the revenue generated from the anti-parasitic products. As the Avermectin patent will shortly expire the price of this material is likely to fall substantially and with it the proportion of the turnover the bulk chemicals will constitute.
19. The joint venture will have its own research and development operations in relation to poultry genetics, animal vaccines and those pharmaceutical products contributed by RP. Merck will carry out some basic research on behalf of Merial though Merial will have no absolute rights to the results of this research. Merck will retain the ownership rights to any new molecules and would give Merial notice of its discovery. The joint venture would then have an option to acquire an exclusive licence.
20. Article 3.(2) of the merger Regulation stipulates that a joint venture must perform, on a lasting basis, all the functions of an autonomous economic entity. In respect of the poultry genetics, animal vaccines and certain pharmaceutical operations Merial will have sufficient financial and other resources including finance, staff, tangible assets and intellectual property rights.
21. Merial will carry out all the operations normally associated with a full function joint venture although it will source some of its requirements for raw materials and finished products in the anti-parasitics area from its parents. It will have its own research and development activities in this area (from RP), its own

---

<sup>2</sup> Business Secrets - significant percentage

<sup>3</sup> Business Secrets - < 10%

<sup>4</sup> Business Secrets - between 5 - 15%

production facilities and its own sales force. The joint venture will add significant value, over [...] <sup>1</sup> % for the finished goods supplied by Merck and over [...] % in the case of bulk chemicals. It will therefore be an autonomous economic entity. The fact that the patent on avermectin will expire shortly will allow competitors to produce generic versions of the bulk chemical and offer the joint venture a realistic alternative source of supply. In this situation the facility to rescind the supply contracts described in paragraph 16 has real value and Merial has the possibility of becoming completely independent.

22. The joint venture is intended to be of perpetual duration.

**c) Absence of co-ordination of the parties' competitive behaviour**

23. Neither parent can compete within the JV's fields of activities for as long as it maintains an interest in the joint venture and for a period of [...] years following the disposal of such interest. The parents are therefore contractually bound not to engage in the same activities as the joint venture.

24. The parents will have no activities either upstream or downstream in poultry genetics, animal vaccines or animal pharmaceuticals, so that there is no possibility of co-ordination between the parents in these areas.

25. In the anti-parasitics, area both parents will remain in the up-stream market for the supply of bulk chemicals and in the case of Merck for finished products. However the products, avermectin (Merck), a broad spectrum antiparasitic used mainly for animals for food production, and fipronil (RP) an insecticide used for pets, have different applications.

26. Both parent companies have significant activities in the neighbouring market of the manufacture and sale of human health products. This sector has a number of common characteristics with the animal health sector, in particular in terms of technology and competitors. However, the customers, regulatory framework, prices, distribution channels are all so significantly different as to make it extremely unlikely that the joint venture could be used as a means of co-ordinating the parents behaviour in these markets. Furthermore Merck and Rhône-Poulenc already have a joint venture for part of their human health operations (vaccines). This operation was cleared under Article 85. In addition Merck will retain certain basic research activities in vaccines which may have human or animal applications.

27. In these circumstances, the co-ordination of the competitive behaviour of the parent companies, through the joint venture, can be excluded. The Commission has therefore concluded that Merial will be a full function concentrative joint venture.

**IV. COMMUNITY DIMENSION**

28. The combined aggregate world-wide turnover of Merck and RP in 1996 exceeded ECU 5,000 million (with consolidated turnover respectively of ECU 15,616 and

---

<sup>5</sup> Case N° 34 776, OJ N° L. 309 of 01.12.1994, pag. 1.

13,217 million). The 1996 aggregate Community-turnover of each of the parties exceeded ECU 250 million. (Merck's turnover was about ECU [...] million and RP's turnover was ECU [...] million). Merck and RP do not achieve more than two-thirds of their Community-wide turnover within one and the same Member State. Therefore, the proposed operation has a Community dimension.

## V. COMPATIBILITY WITH THE COMMON MARKET

### A. Relevant product markets

29. Merial will be active in the animal health and in the poultry genetics sectors.

#### a) The animal health sector.

30. Animal health products are used to prevent and combat illness, disease and other afflictions in animals. There are four main product categories :

- food additives,
- hygiene products,
- vaccines and
- veterinary medicines.

31. The categories may be subdivided to determine the relevant product markets. In the present case, however, subdivision is not necessary for food additives, hygiene products and vaccines, either because Merial will have no activities on those markets or because there are no affected markets. Rhône-Mérieux will contribute important activities in vaccines to Merial, however, Merck is not active in this area.

32. The veterinary medicines comprise various products such anti-microbial drugs, anti-infectious, anti-inflammatories and parasiticides. Merial will be active over this range of medicines. However, the only overlaps are in the field of parasiticides including anti-coccidials, because Merck's animal health business, is focused exclusively on the sale of such products.

33. Parasiticides can be divided into two distinct classes, firstly those that act against single celled parasites (anti-coccidials) and secondly the remaining anti-parasitic preparations which deal with multicellular parasites and which fall into three classes (for ease of reference they will be referred to as anti-parasitics in the text):

- ectocides used for the control of external parasites such as fleas, ticks, lice and mange mites,
- endocides used for the control of internal parasites such as worms, liver flukes, protozoa, and
- endectocides which control both internal and external parasites. These are comparatively new development and are confined mainly to the treatment of large animals.

34. Anti-coccidials are used where animals are raised in confinement and in high densities. Over 80% are used in the poultry industry. In contrast to the other anti-

parasitics, anti-coccidials are administered in the animals' feed or water. Furthermore because the products are administered constantly the animals build up a resistance to a given product so animal breeders have to rotate the products they use at regular intervals or when the levels of coccidials build up in the animal's gut.

35. Anti-coccidials can be differentiated from anti-parasitics by their characteristics, therapeutic effect, their means of administration, and to some extent by the fact that they are mainly used in poultry breeding. Therefore, there are strong indications that anti-coccidials constitute a separate product market.
36. Parasiticides are administered to both companion animals(pets) and animals for food production. There are important differences between the markets for food-producing animals and companion animals. The supply of medicinal products for food-producing animals is governed by considerations of the economic value of the animal, and the labour costs of administering the treatment, which do not apply, or only to a limited extent, in the case of companion animals. Furthermore the supply of medicinal products for food-producing animals is governed by regulations demanding an evaluation of residues, and establishing maximum residue limits for those products in foodstuffs of animal origin. In its previous decision No IV/M.737 - Ciba-Ceigy/Sandoz (17.07.1996), the Commission concluded (points 186 to 189) that the following four classifications represent distinct product categories, given their different characteristics, intended purposes and customers, i.e. farm animal ectocides, farm animal endocides, small animal ectocides and small animal endocides. The situation of endectocides was not examined in that decision because the areas of concern were confined to endoparasites in companion animals and external parasites in animals for food production.
37. Within the categories above, there are products which are not substitutable or are not fully substitutable, for example, in the endoparasiticides for animals for food production, nematocides, which are used for combating gastrointestinal or pulmonary roundworms, are not substitutes for flukicides which treat liver flukes.
38. There are a number of factors to be considered when examining the relevant product markets for these products. The parties argue that endectocides cannot be considered to belong to the same product market as ectoparasiticides and/or endoparasiticides. They state that, even if multivalent products, such as endectocides, have the effect of monovalent products in some applications, the differences in terms of spectrum of parasite treated, efficacy, prices, consumer uses, are sufficient to allow the definition of separate relevant markets for endectocides, endocides and ectocides.
39. Endectocides enable a farmer to be sure that his animal is not infected by large spectrum infestations with a single application. Endectocides cost about three times the price of the traditional anti-parasitics and competitors have indicated that higher prices have not impeded the development of the endectocides although the prices are well above the combined treatment price for endo- and ecto-parasiticide treatment. These factors together with the arguments put forward by the parties suggest that there may be separate relevant market for endectocides.



40. In certain situations where the farmer knows which parasite is affecting his animals it may be more effective to use preparations for that specific problem. Furthermore some endecto-parasiticides cannot be given to lactating cows. For some infestations such as liver flukes endectocides are ineffective even when administered in combination with a flukicide. A more specific and potent flukicide may be indicated. In practice, choice of parasiticide will depend on a wide variety of factors including the number and species of parasites, the species of animal and the condition of the animal.
41. On the other hand, endectocides have been progressively replacing endo-parasiticides and ecto-parasiticides, and as a result over the last three years, there has been an erosion of the endo- and ectoparasiticide markets. Some competitors claim that the positioning of the endectocides in Europe primary has been against endoparasites, and therefore the two products should be considered as forming a single product market.
42. It seems clear that there is a certain degree of interchangeability between endectocides and both endoparasiticides and ectoparasiticides, and the Commission's investigations show that there is a tendency towards the progressive replacement of endoparasiticides and ectoparasiticides. This may indicate that the three products form part of a single market or that endectocides and ectocides or endectocides and endocides may be the relevant market.
43. There are also indications that as well as the separation between small animals and animals for food production there may be separate relevant markets for individual animal species.
44. However, for the purposes of this case, it is not necessary to decide on the precise market definition as, whatever the market definition taken into account, the operation will not create or strengthen a dominant position.

**b) The poultry genetics sector**

45. Poultry genetics is a specialised, research-intensive business in which lines of poultry are genetically selected for increased and improved meat or egg production. The industry has three main sectors, the breeding of chickens for meat production, the breeding of chickens for egg production and the breeding of turkeys for meat production. The products are usually day old chicks sold to commercial hatcheries.
46. Each of the three sectors has its own specificity. Chickens bred for meat production are required to transform their feed into meat as efficiently as possible while chickens bred for egg laying must turn the feed into eggs. Turkeys are a different species with different characteristics.
47. The parties suggest that there are three separate product markets in the poultry genetics industry, consisting of the development of
  - egg layer chicken breeder stock,
  - meat chicken breeder stock and

– turkey breeder stock

48. The Commission considers that in the present case the question whether the market for the development of poultry breeder stock is a single relevant market or two (egg layer and meat chickens, or meat chickens and turkeys) or three markets can be left open, since the operation does not raise any serious doubts, whatever the product market concerned.

## **B. Relevant geographic market**

### **a) The animal health sector**

49. According to the parties, the relevant geographic market is national. There are, according to the parties, a number of reasons for this including different national systems of product registration, strict regulation of animal health products, significantly different distribution systems from Member State to Member State, and the fact that domestic companies tend to have a much larger market share in their home market than in other Member State markets

50. Although there are some factors tending to a progressive “europeanisation”, in particular in matters of registration, the Commission tends to believe that “the definition of the relevant geographic markets for animal health products is national ” The Commission’s investigation showed that most companies active in the animal health products agreed with this conclusion. However, the definition of the relevant geographic market can be left open since, whatever the geographic dimension taken into account, a dominant position is not created or strengthened by the proposed operation.

### **b) The poultry genetics sector**

51. The parties suggest that the market for poultry genetics is larger than national for a number of reasons including, low transport costs (at least within Europe) as day old chicks (the usual state in which the birds are shipped) can survive for up to three days, prices through out Europe are comparable, and the regulatory burden is much lower than for animal health products.

52. With one exception, the replies from competitors to the Commission state that they consider the relevant geographic market is at least the European Community, if not larger. The Commission has concluded that the relevant geographic market is at least the Community.

## **C. Assessment**

### **a) Animal Health Products**

#### **i) Animal vaccines**

53. As Merck is not active in this sector there is therefore no aggregation of market shares and consequently no competition problems will arise from the proposed operation in so far as it concerns these products.

#### **ii) Pharmaceuticals excluding Anti-parasitics**

54. Similarly as Merck is not active in this sector there is therefore no aggregation of market shares and consequently no competition problems will arise from the proposed operation in so far as it concerns these products.

### iii) Anti-coccidials

55. Both Merck and RP have anti-coccidial products and sell these products throughout the Community. According to the parties the combined market shares amount to [...] <sup>6</sup> in Europe. The joint ventures pro forma share of the market is above 20% only in Italy ([...] <sup>7</sup>), and Portugal ([...] <sup>7</sup>). In these countries the joint venture will face competition from the market leader Elanco (estimated market share in Italy [...] <sup>8</sup>), from American Home Products ([...] <sup>7</sup> in Italy and [...] <sup>9</sup> in Portugal) and from Hoechst ([...] <sup>0</sup> in Italy and [...] <sup>8</sup> in Portugal). The proposed operation will not, therefore, create or strengthen a dominant position in anti-coccidials in any Member State.

### iv) Antiparasitics (ectocides, endocides and endectocides)

56. In 1996, RM's antiparasitic sales were ECU [...] million in the world, of which about ECU [...] <sup>1</sup> million in the European Union. RM focuses [...] <sup>7</sup> of its Community-wide antiparasitic turnover in four Member States, i.e. in France ([...] <sup>1</sup>% or ECU [...] <sup>1</sup> million), Italy ([...] <sup>1</sup> %), the UK ([...] <sup>1</sup> %), Spain ([...] <sup>1</sup> %). In the field of antiparasitics, Merck has more significant activities : its 1996 world-wide sales were ECU [...] <sup>1</sup> million, of which about ECU [...] <sup>1</sup> million in the European Union. The Member States the most concerned are France (about ECU [...] <sup>1</sup> million), the UK, Germany, Italy and the Netherlands.

### Antiparasitics for companion animals

57. For companion animals there are no endectocides currently available. However, both Merck and Rhône-Poulenc produce endocides for use in this area. The market situation is dealt with in paragraphs (59-63 below).

58. This category represents about [...] <sup>7</sup> of RM's antiparasitic business. RM sells in particular three antiparasitic products for pets : two endoparasiticides i.e. a product for heartworm treatment (called *Immiticide*) and a gastrointestinal nematocide (called *Dolthene*); and one ectoparasiticide used to control fleas and ticks (called *Frontline*). A large majority of the sales concerns *Frontline*, used only for dogs and cats, mainly in spray form. *Frontline* currently constitutes RM's most important product. It accounts for [...] <sup>7</sup> of RM's turnover in antiparasitics for companion animals.

59. Only RP has products for the treatment of external parasites (ectocides) in companion animals. Merck's products act only against internal parasites, and represent about [...] <sup>7</sup> of its antiparasitic business. Therefore in this sector the question of whether there is a combined market including ectocides, endocides

---

<sup>6</sup> Business Secrets - between 15 - 25%

<sup>7</sup> Business Secrets - between 20 - 30%

<sup>8</sup> Business Secrets - between 25 - 35%

<sup>9</sup> Business Secrets - between 30 - 50%

<sup>10</sup> Business Secrets - between 10 - 20%

and endectocides does not arise because there is currently no bridge product which combines the characteristics of ectocides and endocides. On a separate market no competition problems will arise for ectocides as only RM produces these products.

60. Merck sells two endoparasiticides for pets, namely a product for heartworm preventive (called *Cardomek/Cardotek*) and a heartworm preventive product combined with a gastrointestinal nematocide (called *Cardomet/Cardotek Plus-Pyrantel*) . These products are based on ivermectin but, according to the parties, they have no effect on external parasites in companion animals.
61. The combined market shares of endocides for companion animals exceed 30%<sup>1</sup> in Belgium, France, Ireland, Italy, the Netherlands and Sweden. Of these countries there is no overlap in Ireland and Sweden and the additional market share of RP in the Netherlands and in Belgium is only about [...]² .
62. In France<sup>13</sup> , the market share will be only just over [...]⁸ ([...]¹%). In Italy, although the joint venture have a comparatively high market share [...]⁴ , the additional market share of RP is only about [...]², and the joint venture will face competition from major pharmaceutical companies already established there, including Pfizer ([...]¹⁰), Novartis ([...]¹⁰) and Bayer ([...]⁷).
63. The operation will not therefore create or strengthen a dominant position in the market for companion animal endocides in any Member State.

#### **Antiparasitics for animals for food production**

64. On the hypothesis that endocides, ectocides and endectocides constitute three separate markets the proposed operation will not give rise to competition problems for animals for food production because only Merck with its ivermectin products is active on the market for endectocides and it has no ectocides or endocides.
65. In a combined market for endocides, ectocides and endectocides for large animals the joint venture would have market shares of above 40% in seven Member States, Finland ([...]¹⁵ ), France ([...]¹⁴), Germany ([...]¹⁴), Italy ([...]¹⁶), the Netherlands ([...]¹⁷), Portugal ([...]¹⁸) and Sweden ([...]¹⁹). In all of these countries except France ([...]⁴) and Italy ([...]¹²) the additional market share from

---

<sup>11</sup> In this paragraph, the market shares are calculated on the basis of the respective turnover of the parties and 10 international competitors. Therefore, as there are other players on the market (even less important), parties' market shares will be lower than those stated

<sup>12</sup> Business Secrets - < 5%

<sup>13</sup> See footnote 11

<sup>14</sup> Business Secrets - between 35 - 45%

<sup>15</sup> Business Secrets - between 65 - 75%

<sup>16</sup> Business Secrets - between 40 - 50%

<sup>17</sup> Business Secrets - between 45 - 55%

<sup>18</sup> Business Secrets - between 55 - 65%

<sup>19</sup> Business Secrets - between 60 - 70%

RP was less than 1%. So that with the exception of France, the proposed operation is unlikely to change the structure of the national markets<sup>20</sup>

66. Approximately [...] <sup>2</sup> of the joint venture's turnover for farm animal antiparasitics would be derived from the sales of endectocides based on Merck's ivermectin. Ivermectin based products were the first endectocides on the market. In the last two years competitors have introduced competing products (dectomax and cydectin) which have succeeded in establishing themselves on the market. At present the competing products are not available in all presentations. In France where the competing products have been available in injectable form for cows Merck's share of this sector has fallen from 100% in the fourth quarter of 1994 to less than [...] <sup>8</sup> in the first quarter of 1997. One of the endectocide producers has already introduced a "pour-on" product<sup>1</sup> into France the other has launched its "pour-on" product in the United Kingdom. It is likely that in the comparatively near future these "pour-on" products will be more widely available. The parties expect each of the three endectocide producers to have about a third of the market when competitors have developed products for all animals and in the most important presentations, injectable, pour on and bolus. Such a development, which does not appear unreasonable, and without taking into consideration the probable reductions in price as competition grows in endectocides, would reduce the joint ventures market shares to below [...] <sup>4</sup> in all Member States and below [...] <sup>22</sup> in all the countries where consumption exceeds 5% of the Community total.
67. Accordingly, the operation would not create or strengthen a dominant position in a combined market for endocides, ectocides and endectocides.
68. With regard to the individual species of animals for food production no problems would arise in the cases of pigs, horse and poultry as there are (with very minor exceptions) no overlaps.
69. For sheep there are overlaps, according to the parties, only in France, Italy and Spain. In Spain and Italy, volumes sold by RP were not significant and concern only endocides. In France, the combined market shares were less than [...] <sup>9</sup>.
70. So far as cattle are concerned, there are overlaps in the same three countries France, Italy and Spain. In France, the combined market shares of the parties would be [...] <sup>17</sup> of a market for endectocides and endocides, about [...] <sup>6</sup> of a market for ectocides, endectocides and endocides. However the bulk ([...] <sup>3</sup>) of this is made up of products derived from Merck's ivermectin which will face increasing competition from competing endectocides as described in paragraph 66 above. It is therefore likely that the market shares for the endectocides will fall as the products from competing manufacturers establish themselves in this market. The operation will not create or strengthen a dominant position in the market for antiparasitics for cattle in France.

---

<sup>20</sup> See footnote 11

<sup>21</sup> These products are available in different presentations; injectable, "pour-on", etc.

<sup>22</sup> Business Secrets - between 20 - 40%

71. In Spain, the sales of RP are [...] <sup>2</sup> of the combined sales of endocides and endectocides and even less of the combined sales of the three products. The proposed operation would not create or strengthen any dominant position in the market for antiparasitic products for cattle in Spain.
72. In Italy, where the cattle market is smaller than the sheep market, a very large part of the sales of endocides and endectocides is accounted for by endectocides ([...] <sup>1</sup>). The joint venture will be subject to the same competition from endectocides produced by competitors as described above (point 66). These competitors have built a share of the combined market for endocides and endectocides from zero to [...] <sup>4</sup> in two years. and will have significant restraining influence on the joint venture in Italy.
73. It has been suggested, by a competitor, that the joint venture would be in a very strong position in a market for the treatment of liver flukes in France as a result of the combination of Merck's Ivomec D and RP's flukicide. (Dovenix). Ivomec D is a combination of the ivermectin with clorsulon, a product with [...] capability for [...] <sup>1</sup>. Ivomec D according to the parties is not intended to replace traditional flukicides but was introduced as a marketing ploy to [...]. The development of sales of the two products shows that Ivomec D and traditional flukicides cannot be considered to be in the same market. In value terms the sales of Ivomec D are now [...] <sup>23</sup> of those of flukicides. However despite this very large increase, the sales of flukicides have also increased, contrary to expectations. Furthermore the price of treatment with Ivomec D is between 2 and 4 times that for traditional treatment.
74. The joint venture will face competition from major pharmaceutical companies such as American Home Product, Pfizer, Janssen, Novartis, Bayer, Hoechst and Mallinckrodt, in varying combinations in the various geographic and product markets antiparasitic products.
75. Therefore, the establishment of the joint venture would not create or strengthen a dominant position on any market for antiparasitics.

#### **v) Poultry genetics**

76. The activities of the parties overlap in the area of meat chicken breeder stock where the combined market share in the Community would be [...]. For egg laying breeder stock the ISA (RP group) has [...] <sup>4</sup> of the market, the Merck operation will add only about [...] <sup>2</sup> to this figure, which will not be sufficient to significantly change the market structure. If the development of chicken breeder stock were the relevant market the combined share of the parties would be about [...] <sup>7</sup>.
77. Only Hubbard (Merck group) has activities in turkey genetics so the operation will have no effect on any market for turkey genetics. If all types of poultry are considered as a single relevant market the joint venture will have a share of about [...] <sup>7</sup>.

---

<sup>23</sup> Business Secrets - significantly larger than

<sup>24</sup> Business Secrets - between 50 - 60%

78. The joint venture will face competition from a number of poultry genetics companies including Lohmann which specialises in egg laying breeder stock with a share of the egg-layer breeder stock market of at least [...] <sup>5</sup>, and from Cobb (at least [...] <sup>14</sup>) and Ross ([...] <sup>8</sup>) in meat breeder stock market.
79. The establishment of the joint venture would not create or strengthen a dominant position in any community market for poultry genetics.

(g) **Overall conclusion**

80. No matter which product market definitions are chosen the proposed operation will not create or strengthen a dominant position.

**VI .Ancillary Restraints**

81. The intellectual property licences will guarantee Merial's commercial freedom to carry out its activities in the animal health field. They are directly related to the creation of Merial and necessary for the implementation of the concentration and are therefore ancillary to the concentration.
82. The Master Merial Venture Agreement requires Merck and RP not to sell or supply any animal health or poultry genetics products (except as a distributor for the joint venture). This provision binds both parties until the sale of substantially all of Merial's assets or the sale by both parties of their Merial interests to a third party, and binds each party for three years following the sale of its interests in the joint venture to the other party or a third party. The non-compete clause in the Master Merial Venture Agreement is essential to protect the joint venture from competition from its parents, it is therefore both directly related to the establishment of Merial but also necessary for its implementation. This clause demonstrates the departure of the parents from the markets in question and therefore can be regarded as ancillary.
83. Merial requires sources of finished or semi-finished products and bulk chemicals to operate in the anti-parasitic area. However the terms of the supply agreements, some of which are of [...] <sup>1</sup> year or [...] <sup>1</sup> duration and which continue beyond the expiry of the relevant patents on the products are more restrictive than is necessary, particularly as they require the joint venture to purchase all its requirements from its parents, to ensure that the joint venture has adequate supplies during a transitional period. This conclusion is not in contradiction with the fact that the joint venture will have the possibility of breaking the contracts after [...] <sup>1</sup> years if it gives [...] <sup>1</sup> year notice. These contracts cannot be considered as ancillary
84. Any restrictions of competition which cannot be regarded as restrictions ancillary to the concentration may be examined under Article 85 .

**IV. CONCLUSION**

---

<sup>25</sup> Business Secrets - between 30 - 40%

85. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.
86. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,