



EUROPEAN COMMISSION
DG Competition

***Case M.8974 - PROCTER & GAMBLE / MERCK
CONSUMER HEALTH BUSINESS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/08/2018

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 27.08.2018
C(2018) 5726 final

PUBLIC VERSION

To the notifying party:

**Subject: Case M.8974 – Procter & Gamble/Merck Consumer Healthcare Business
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²**

Dear Sir or Madam,

- (1) On 20 July 2018, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the Procter & Gamble Company ("P&G", United States) will acquire sole control over the consumer healthcare business of Merck KGaA ("Merck", Germany) (the "Target" business). P&G is referred to as the "Notifying Party" and P&G and the Target are collectively referred to as the "Parties".

1. THE PARTIES

- (2) P&G is a US-based global manufacturer of consumer goods, including fabric and household care, grooming, health care, baby, feminine and family care products.
- (3) The Target is the consumer health business of Merck, which is based in Germany. It is active worldwide in the research, development, manufacturing, marketing, and sales of consumer health products, which are mainly available over-the-counter ("OTC"), for various indications.

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

² OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

2. THE CONCENTRATION

- (4) The Transaction will be structured as a mixed acquisition of shares and assets. Specifically, at closing, P&G will acquire shares of several entities relating to the Target's activities. In addition, P&G will acquire assets related to the Target, including real estate, equipment and machinery, IP rights, and marketing authorizations for the Target's products.
- (5) As a result, P&G will acquire sole control over the Target. The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³. Each of them has an EU-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (7) The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. COMPETITIVE ASSESSMENT

4.1. General considerations on market definition

4.1.1. Relevant product market

4.1.1.1. General approach to product market definition in pharmaceutical cases

- (8) When defining relevant markets in past decisions dealing with finished dose pharmaceutical products, the Commission based its assessment on the following general approach.⁴
- (9) The Commission noted that medicines may be subdivided into therapeutic classes by reference to the "Anatomical Therapeutic Classification" (ATC), devised by the European Pharmaceutical Marketing Research Association (EphMRA) and maintained by EphMRA and Intercontinental Medical Statistics (IMS).
- (10) The ATC system is a hierarchical and coded four-level system which classifies medicinal products by class according to their indication, therapeutic use, composition, and mode of action. In the first and broadest level (ATC 1), medicinal products are divided into the 16 anatomical main groups. The second level (ATC 2) is either a pharmacological or therapeutic group. The third level (ATC 3) further groups medicinal products by their specific therapeutic indications. Finally, the ATC 4 level is the most detailed one (not available for all

³ Turnover calculated in accordance with Article 5 of the Merger Regulation.

⁴ See for example M.7919 *Sanofi/Boehringer Ingelheim Consumer healthcare Business*, M.6969 *Valeant Pharmaceuticals International/Bausch & Lomb Holdings*, M.577, *Novartis/Alcon*, and M.5865 *Teva/Ratiopharm*.

ATC 3) and refers for instance to the mode of action (e.g. distinction of some ATC 3 classes into topical and systemic depending on their way of action) or any other subdivision of the group. Medicinal products are classified according to the ATC system in the IMS Midas data base.

- (11) The Commission has referred to the third level (ATC 3) as the starting point for defining the relevant product market. However, in a number of cases, the Commission found that the ATC 3 level classification did not yield the appropriate market definition within the meaning of the Commission Notice on the Definition of the Relevant Market.⁵ In particular in relation to originator and generic medicines, the Commission has considered in previous decision plausible product markets at the ATC 4 level, at a level of a molecule or a group of molecules that are considered interchangeable so as to exercise competitive pressure on one another. However, it should be borne in mind that the overlap in therapeutic uses does not necessarily imply any particular economic substitution patterns between products.⁶
- (12) In relation to generic medicines sold on prescription (Rx), the Commission has also considered in previous decisions that the most plausible product market is generally at the level of a molecule since generics are the closest substitutes to the originator product based on the same molecule. The Commission then assesses the potential for these products to enter into competition with other products by reference to their characteristics, intended therapeutic use, and expected therapeutic and economic substitutability.⁷
- (13) In relation to OTC products sold in pharmacies, the active ingredient (molecule) appears to play a much more subordinated role, unless it is equivalent to a specific therapeutic/labelled indication (in situations where all products based on the same molecule and only those, have the same indication).⁸ The Commission has considered in previous decisions that the most plausible product market is generally at the level of the therapeutic indication, which may be a sub-division of the ATC 3 or even ATC 4 categories or may combine products belonging to different ATC 3 or ATC 4 categories.⁹ In view of these specificities, IMS has developed a specific classification for OTC products, including the OTC 2, OTC 3, and OTC 4 levels. In previous decisions dealing with OTC products, the Commission has also referred to the OTC 3 level as the starting point for defining the relevant product market in OTC markets.¹⁰

⁵ OJ C 372, 9.12.1997, p. 5–13.

⁶ See for example M.7919 *Sanofi/Boehringer Ingelheim Consumer Healthcare Business*, M.7480 *Actavis/Allergan*; M.7279 *Mylan/Abbott EPD-DM*; M.7276 *GlaxoSmithKline/Novartis vaccines business (excl. influenza)/Novartis Consumer Health business*; M.7275 *Novartis/GlaxoSmithKline Oncology Business*; and M.5253 *Sanofi-Aventis/Zentiva*.

⁷ See for example M.7746 *Teva/Allergan Generics*.

⁸ See for example M.7919 *Sanofi/Boehringer Ingelheim Consumer Healthcare Business*, para. 23.

⁹ See for example M.7919 *Sanofi/Boehringer Ingelheim Consumer Healthcare Business*.

¹⁰ M.8889 *Teva/PGT OTC Assets*, paras. 48, 58, 70ff, and 84ff, M.7919 *Sanofi/Boehringer Ingelheim Consumer Healthcare Business*, para. 264 and 268, M.7276 *GlaxoSmithKline/Novartis Vaccines Business (Excl. Influenza)/Novartis Consumer Health Business*, para. 197, and M.6162 *Pfizer/Ferrosan Consumer Healthcare Business*, para. 37.

4.1.1.2. Distinction between over-the-counter (OTC) and prescription (Rx) products

- (14) The Commission has in the past¹¹ defined separate markets for medicines which can be dispensed only against a prescription and those which can be sold OTC. Medical indications, side effects, regulatory framework, distribution and marketing tend to differ between these drug categories, even if the active ingredients may sometimes be identical.
- (15) OTC products may be advertised to the public, as a result of which brands play a comparatively more significant role in the OTC industry, and advertising is a key feature in these markets. In addition, prescribers do not need to intervene in the purchase of OTC products. In most cases, consumers choose OTC pharmaceuticals themselves, possibly following the guidance of a pharmacist, and purchases are generally not reimbursed. In making purchasing decisions, consumers seem to predominately rely, aside from the brand, on therapeutic/labelled indication and price.
- (16) By contrast, prescription pharmaceuticals (Rx) need to be prescribed by physicians. Their intervention is essential in the choice of the product. Pricing for prescription products is influenced by the public health care system, which pays (part of) the purchase price via reimbursement. Advertising is targeted at prescribers, namely, doctors and hospitals.¹²
- (17) However, in certain cases, products which are available OTC can still be reimbursable if bought on prescription.¹³ Furthermore, it cannot be excluded that OTC and prescription products compete with each other, especially in cases where the status of the drug is not clearly limited to either OTC or prescription.¹⁴

4.1.1.3. Other possible market segmentations

- (18) As the Commission has acknowledged in its previous decisions,¹⁵ medicines are differentiated not only by their active ingredient(s) but also, in particular, as recognized by the European regulatory framework for medicines for human use, by their posology (or dosage), pharmaceutical form, method and route of administration (collectively referred to as "galenic form" in this decision) which may limit their substitutability. The galenic form of a medicine may in some cases influence the preferences of consumers or be targeted to specific patients groups (e.g. children), and therefore, two medicines with the same active ingredient and indications may not be (fully) interchangeable for certain patient groups.¹⁶ Certain medicines can also be indicated only for a specific patient group (e.g. adults, children or babies), meaning that they have only been shown to be safe and effective when administered to that specific group of patients.

¹¹ See for example M.6969 *Valeant Pharmaceuticals International/Bausch & Lomb Holdings*, M.5778 *Novartis/Alcon*, M.5865 *Teva/Ratiopharm*, and M.5295 *Teva/Barr*.

¹² See M.5953 *Reckitt Benckiser/SSL*.

¹³ See for example M.5778 *Novartis/Alcon*, M.5253 *Sanofi-Aventis/Zentiva*, and M.3751 *Novartis/Hexal*.

¹⁴ See M.7645 *Mylan/Perrigo*, M.5778 *Novartis/Alcon*.

¹⁵ See for example M.5778 *Novartis/Alcon*, M.5865 *Teva/Ratiopharm*, and M.5253 *Sanofi-Aventis/Zentiva*.

¹⁶ See for example M.7919 *Sanofi/Boehringer Ingelheim Consumer Healthcare Business*, para. 24.

4.1.1.4. Conclusion

- (19) The Commission will analyse below the relevance of these distinctions for the specific markets at stake.

4.1.2. Relevant geographic market

- (20) The Commission has previously consistently defined the geographic markets for finished pharmaceutical products as being national in scope.¹⁷
- (21) The market investigation in this case did not provide any indications that such market definition should be revisited, in particular in view of the national regulatory and reimbursement schemes and the fact that competition between pharmaceutical firms still predominantly takes place at a national level.
- (22) Therefore, for the purposes of this Decision, the Commission concludes that the scope of the geographic markets in relation to all assessed finished dose pharmaceutical products markets is national.

4.2. Methodology for the identification and the assessment of affected markets

- (23) In line with Commission precedents, the Notifying Party used IMS data¹⁸ to identify the affected markets that the Transaction gives rise to. Set forth below is the methodology followed in this case:
- a) *For OTC vs OTC overlaps*: the Notifying Party identified the overlapping indications, following in particular the OTC classification and data of IMS Padds.¹⁹ The Notifying Party also provided information using the ATC classification and data of IMS Midas;²⁰
 - b) *For prescription-bound drugs ("Rx") vs OTC overlaps*: the Notifying Party confirmed that there are no such overlaps using the ATC classification and data of IMS Midas;
 - c) *For Rx vs Rx overlaps*: the Notifying Party confirmed that there are no such overlaps using the ATC classification and data of IMS Midas.
- (24) In OTC v. OTC overlaps, in line with the Commission precedents in the pharmaceutical sector, the Notifying Party classified affected markets in three categories:

¹⁷ See most recently, M.8675, *CVC/Teva's Women's Health Business*, para. 20.

¹⁸ Data on sales in value and volume of pharmaceutical products compiled by Intercontinental Medical Statistics.

¹⁹ IMS Padds is a database of Intercontinental Medical Statistics compiling sales of pharmaceutical companies following a classification per "OTC" level designed to capture sales of OTC products having the same therapeutic indication.

²⁰ IMS Middas is database of Intercontinental Medical Statistics compiling sales of pharmaceutical companies following a classification per "ATC" level, which corresponds to a division by therapeutic classes by reference to the Anatomical Therapeutic Classification of the European Pharmaceutical Marketing Research Association.

- *Group 1*, where the Parties' combined market share exceeds 35% and the increment exceeds 1%;²¹
 - *Group 2*, where the Parties' combined market share exceeds 35% but the increment is below 1%; and
 - *Group 3*, where the Parties' combined market share is between 20% and 35%.
- (25) The Commission has analysed all markets affected by the Transaction for each of the OTC v. OTC overlaps. In line with previous decisions, Group 3 markets are however not individually considered in detail in this Decision.²² The Commission assessed the competitive situation on these markets analysing the nature and the number of existing competitors and considered that the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market in these markets.

4.3. OTC vs OTC Product Overlaps – Group 1 markets

- (26) The Transaction gives rise to Group 1 markets in nasal decongestants in Austria and in Greece.

4.3.1. Market Definition

- (27) Nasal decongestants are used to relieve congestion in the upper respiratory tract. Both Parties offer topical nasal decongestants, based on the same molecule, *oxymetazoline*.
- (28) In past Commission decisions, markets involving topical nasal preparations have been assessed at the level of different ATC classes or combinations of ATC classes, but the market definition was always ultimately left open. Plausible market definitions include at the level of ATC 3 class (R1A – Topical Nasal Preparations)²³ or ATC 4 class (R1A7 – Nasal Decongestants).²⁴
- (29) The Commission has also looked into relevant market definitions for topical nasal decongestants including a combination of ATC 3 classes. In *Pfizer/Warner-Lambert*, the Commission considered whether ATC 3 classes R1A – Topical Nasal Preparations and R1B – Systemic Nasal Preparations form part of a single market.²⁵ In *Merck/Schering-Plough*, the Commission also considered a broad

²¹ According to the Parties, the Transaction does not give rise to any Group 1+ markets.

²² The Transaction gives rise to Group 3 markets in nasal decongestants in Belgium, the Czech Republic, Hungary, and Poland; expectorants in France; and sore throat preparations in France. In all these markets, the combined share of the Parties is moderate to low and a number of strong competitors will remain active. The Transaction also technically gives rise to a Group 2 market in the UK in OTC 3 class 03A9 - Other Digestive and Stomach Products and in OTC 4 class 03A9C – Other Digestive and Stomach Products (Capsules and Tablets). However, this is based on IMS data, which only include sales on the pharmacy channel. In the UK, digestive and stomach products are also often sold as General Sales License ("GSL") drugs or directly online or through health practitioners and health food shops. To cover these channels, the Parties estimated market shares using IRi data for indigestion remedies in the UK. On the basis of these data, the combined share of the Parties is below 5% and the Transaction does not give rise to an affected market.

²³ See e.g., M.6280 *Procter & Gamble/Teva OTC Business*, para. 13, M.5502 *Merck/Schering-Plough*, para. 44, and M.3354 *Sanofi-Synthelabo/Aventis*, para. 23.

²⁴ See M.7919 *Sanofi/Boehringer Ingelheim Consumer Healthcare Business*, paras. 48ff.

²⁵ M.1878 *Pfizer/Warner-Lambert*, paras. 35-37.

market including several ATC 3 classes, namely R1A – Topical Nasal Preparations, R1B – Systemic Nasal Preparations, R3J – Antileukotriene Anti-Asthmatics, and R6A – Antihistamines Systemic.²⁶

- (30) In the present case, the Notifying Party submits the market should be defined at the level of OTC 3 class, 01B2 – Nasal Decongestants.²⁷ According to the Notifying Party, OTC 3 class 01B2 (IMS Padds database) generally corresponds to the ATC 4 class R1A7 (IMS Midas database).
- (31) Finally, the Notifying Party considered a possible market delineation based on galenic form at the level of OTC 4 class, namely, 01B2A – Nasal Decongestants (Aerosols and Sprays). Such a relevant market would exclude topical nasal decongestants that are administered as drops.
- (32) The Notifying Party however submits that there is no separate relevant market for *oxymetazoline*-based topical nasal decongestants for the following reasons:
- a) Nasal decongestants are considered on the basis of the therapeutic use and not on the basis of the molecule from a consumer and healthcare professional perspective. To support this claim the Notifying Party submitted surveys among doctors; pharmacists; and consumers which confirm this specifically for topical nasal decongestants;
 - b) OTC product advertising rarely focuses on the active ingredient. Reference to the molecule included in the product does not contribute to a successful brand communication; and
 - c) *Oxymetazoline* is substitutable with several other molecules that are included in topical nasal decongestants, namely, *xylometazoline*, *tramazoline*, and *phenylephrine*. The Notifying Party added that in particular, *oxymetazoline* and *xylometazoline* have the same mode of action. They are both α_2 -receptor agonists and achieve their decongestive effect via activation of α_2 -adrenergic receptors, resulting in vasoconstriction of the blood vessels.
- (33) First, as concerns the substitutability between nasal decongestants in spray and in nose drops the results of the market investigation were mixed. Several respondents stated that the two types of nasal decongestants are interchangeable for patients, while indicating that individual patients seem to have a preference. Others highlighted the differences between nasal decongestant in sprays and drops, including target population (with drops being more convenient for babies); efficacy (with sprays being more efficient); and price (with drops being cheaper).²⁸

²⁶ M.5502 *Merck/Schering-Plough*, para. 50 and Table 1.

²⁷ According to the Notifying Party, OTC 3 class 01B2 generally corresponds to the ATC 4 class R1A7. The only difference between the two classes is that 01B2 includes certain products that are classified under R1A6 – Nasal Antiallergic Agents and R1A9 – Other Topical Nasal Preparations in IMS Midas. For example, Apomedica's Luuf Nasenspray in Austria and GSK's Vibrocil in Greece are classified under 01B2 in IMS Padds and in R1A6 in IMS Midas.

²⁸ See replies to question 8 of Questionnaire Q1 – Competitors; replies to question 5 of Questionnaire Q2 – Customers (Austria); replies to question 5 of Questionnaire Q3 – Customers (Belgium); replies to question 5 of Questionnaire Q4 – Customers (Czech Republic); replies to question 5 of Questionnaire Q5 – Customers (Germany); replies to question 5 of Questionnaire Q6 – Customers (Greece); replies to question Q8 – Customers

- (34) In the assessment of the Transaction, the Commission also contemplated a segmentation of the relevant product market(s) at molecule level, namely *oxymetazoline*.
- (35) Second, as concerns the molecule, the market investigation in this specific case confirmed the molecule is among the least important parameter that patients take into account when purchasing nasal decongestants.²⁹ Rather, the key to the buyer's choice is the brand and the galenic form.³⁰ As one market participant put it, the "*product brand gives the consumer associations, making the decision easier and quicker... [the] molecule, however, is not so important because consumers do not usually know which active substance the product contains. If the product is effective, [the] consumer will buy the product next time because in his mind the product/brand is effective, not the molecule itself*".³¹
- (36) As concerns the purely therapeutic action of various molecules used in nasal decongestants, a wide majority of respondents indicated that *xylometazoline* is directly substitutable to *oxymetazoline*.³² A number of respondents also mentioned *phenylephrine* and *naphazoline* as substitutable to *oxymetazoline*.³³ Finally, no respondents identified circumstances where only *oxymetazoline*-based nasal decongestants could be used by patients.³⁴
- (37) These findings are in line with the Commission's market investigation in *Sanofi/Boehringer Ingelheim* which suggested that "*defining product market on the basis of active ingredient would not be appropriate in this case... there is a wide range of molecules with the same or similar efficacy as oxymetazoline that could be and are used by patients, such as phenylephrine, xylometazoline or tramazoline*".³⁵

(Poland). According to some of the respondents in the market investigation, nasal decongestants in the form of spray "work better" compared to drops, which are cheaper and preferred for babies.

²⁹ See replies to question 5 of Questionnaire Q1 – Competitors; replies to question 2.2 of Questionnaire Q6 – Customers (Greece); replies to question 2.2 of Questionnaire Q3 – Customers (Belgium); replies to question 2.2 of Questionnaire Q4 – Customers (Czech Republic).

³⁰ See replies to question 5 of Questionnaire Q1 – Competitors; replies to question 2.6 of Questionnaire Q2 – Customers (Austria); replies to questions 2.1, 2.3, and 2.6 of Questionnaire Q3 – Customers (Belgium); replies to questions 2.1, 2.3, and 2.6 of Questionnaire Q4 – Customers (Czech Republic); replies to question 2.6 of Questionnaire Q5 – Customers (Germany); and replies to questions 2.1, 2.3, and 2.6 of Questionnaire Q6 – Customers (Greece).

³¹ See replies to question 5.6 of Questionnaire Q1 – Competitors.

³² See replies to question 6 of Questionnaire Q1 – Competitors; replies to question 3 of Questionnaire Q2 – Customers (Austria); replies to question 3 of Questionnaire Q3 – Customers (Austria); replies to question 3 of Questionnaire Q4 – Customers (Czech Republic); and replies to question 3 of Questionnaire Q6 – Customers (Greece).

³³ See replies to question 6 of Questionnaire Q1 – Competitors and replies to question 3 of Questionnaire Q4 – Customers (Czech Republic).

³⁴ See replies to question 7 of Questionnaire Q1 – Competitors; replies to question 4 of Questionnaire Q2 – Customers (Austria); replies to question 4 of Questionnaire Q3 – Customers (Belgium); and replies to question 4 of Questionnaire Q4 – Customers (Czech Republic).

³⁵ M.7919 *Sanofi/Boehringer Ingelheim Consumer Healthcare Business*, para. 45.

- (38) In light of the above, the Commission takes the view that there is no separate market for *oxymetazoline*-based topical nasal decongestants. The question as to whether the relevant product market for nasal decongestants should be defined at ATC 3 (R1A), ATC 4 (R1A7), OTC 3 (01B2), OTC 4 (01B2A) or a combination of ATC 3 classes (R1A+R1B or R1A+R1B+R3J+R6A) can however be left open, since under all these plausible market delineations, the Transaction will not give rise to serious doubts as to its compatibility with the internal market.

4.3.2. Parties' products

- (39) In Austria, P&G offers Vicks Sinex, based on *oxymetazoline*. Vicks Sinex is available as a nasal spray in formulations of 15 ml and it is indicated for adults and children above 6 years old. The Target offers Nasivin also based on *oxymetazoline* which is available as a nasal spray and in the form of drops. Nasivin nasal spray is sold in formulations of 10 ml with 0.05% active ingredient concentration (indicated for adults and children above 6 years old); 10 ml with 0.025% active ingredient concentration (for children 1-12 years old); and 5 ml with 0.01% active ingredient concentration (for babies).
- (40) In Greece, P&G offers Vicks Sinex, based on *oxymetazoline*. Vicks Sinex is available as a nasal spray in formulations of 15 ml and it is indicated for adults and children above 6 years old.³⁶ The Target offers Ronal (*oxymetazoline*) which is available as a nasal spray in formulations of 10 ml. Ronal is indicated for adults and children above 6 years old.

4.3.3. Competitive Assessment

4.3.3.1. Austria

- (41) In Austria, the Transaction gives rise to Group 1 markets for nasal decongestants at OTC 3 (01B2), OTC 4 (01B2A), ATC 3 (R1A) and ATC 4 (R1A7) levels and at the level of a combination of ATC 3 classes (R1A+R1B and R1A+R1B+R3J+R6A).
- (42) The table below presents the Parties' market shares and the number of competitors with a market share above 5% in both value and volume for nasal decongestants in Austria over the last three years, following all plausible market delineations.

³⁶ IMS (Padds and Midas) also report limited sales of P&G's Vicks Proc in Greece in OTC 3 class 01B2A ([SALES DATA]) and ATC 4 class R1A7 ([SALES DATA]). The Notifying Party submitted that Vicks Proc sales have been likely misallocated in these classes because Vicks Proc relates to Vicks Patches which are chest rubs (not nasal decongestants).

Level	Category Description	Market Group	Year	Market Shares (Value/Volume)			Number of Rivals > 5%
				P&G	Merck	Combined	
01B2A	Nasal decongestants in Spray	Group 1	2017	[0-5]%/ [0-5]%	[40-50]%/ [70-80]%	[40-50]%/ [70-80]%	At least 3
			2016	[0-5]%/ [0-5]%	[40-50]%/ [70-80]%	[40-50]%/ [70-80]%	At least 2
			2015	[0-5]%/ [0-5]%	[40-50]%/ [70-80]%	[40-50]%/ [70-80]%	At least 2
R1A7	Nasal decongestants	Group 1	2017	[0-5]%/ [0-5]%	[40-50]%/ [60-70]%	[40-50]%/ [60-70]%	At least 3
			2016	[0-5]%/ [0-5]%	[40-50]%/ [60-70]%	[40-50]%/ [60-70]%	At least 2
			2015	[0-5]%/ [0-5]%	[40-50]%/ [60-70]%	[40-50]%/ [60-70]%	At least 3
01B2	Nasal decongestants	Group 1	2017	[0-5]%/ [0-5]%	[30-40]%/ [60-70]%	[30-40]%/ [60-70]%	At least 2
			2016	[0-5]%/ [0-5]%	[30-40]%/ [60-70]%	[30-40]%/ [60-70]%	At least 3
			2015	[0-5]%/ [0-5]%	[30-40]%/ [60-70]%	[30-40]%/ [60-70]%	At least 3
R1A	Topical nasal preparations	Group 1	2017	[0-5]%/ [0-5]%	[30-40]%/ [50-60]%	[30-40]%/ [50-60]%	At least 3
			2016	[0-5]%/ [0-5]%	[30-40]%/ [50-60]%	[30-40]%/ [50-60]%	At least 2
			2015	[0-5]%/ [0-5]%	[30-40]%/ [50-60]%	[30-40]%/ [50-60]%	At least 2
R1A+R1B	Topical and Systemic nasal preparations	Group 1	2017	[0-5]%/ [0-5]%	[30-40]%/ [50-60]%	[30-40]%/ [50-60]%	At least 3
			2016	[0-5]%/ [0-5]%	[30-40]%/ [50-60]%	[30-40]%/ [50-60]%	At least 2
			2015	[0-5]%/ [0-5]%	[30-40]%/ [50-60]%	[30-40]%/ [50-60]%	At least 2
R1A+R1B+R3J+R6A	Topical and Systemic nasal preparations, Anti-leukotriene anti-asthmatics and Systemic antihistamines	Group 1	2017	[0-5]%/ [0-5]%	[30-40]%/ [50-60]%	[30-40]%/ [50-60]%	At least 3
			2016	[0-5]%/ [0-5]%	[30-40]%/ [50-60]%	[30-40]%/ [50-60]%	At least 2
			2015	[0-5]%/ [0-5]%	[20-30]%/ [50-60]%	[30-40]%/ [50-60]%	At least 2

Source: Form CO

- (43) In 2017, the combined market share of the Parties reached [40-50]% in value (for nasal decongestants in R1A³⁷ and nasal decongestants in spray (01B2A)) and [70-80]% in volume (for nasal decongestants in spray (01B2A)).
- (44) However, the market share increment contributed by P&G is limited both in value and volume under all plausible market delineations ([0-5]% or less). During the market investigation, most respondents did not identify P&G Vicks Sinex among the main nasal decongestant products sold in Austria.³⁸

³⁷ As indicated above, the OTC category for nasal decongestants "01B2" also includes certain products that are classified under the ATC classes "R1A6 – Nasal Antiallergic Agents" and "R1A9 – Other Topical Nasal Preparations" in IMS Midas.

³⁸ See replies to question 9 of Questionnaire Q1 – Competitors and replies to question 6 of Questionnaire Q2 – Customers (Austria).

- (45) Post-Transaction, the combined entity will continue facing competitive pressure from at least two large players, having products based on the directly substitutable molecule *xylometazoline* namely, GSK (Otrivin) and Teva (Ratiosoft). Market investigation respondents identified these two products among the main nasal decongestants products sold in Austria.³⁹
- (46) Moreover, P&G's and Merck's nasal decongestants do not appear to compete closely in Austria for the following reasons:
- a) While some market participants mentioned that P&G's and Merck's products are based on the same molecule (*oxymetazoline*), market respondents generally considered that the closest competitor to Merck's Nasivin is GSK's Otrivin.⁴⁰ Otrivin has the same mode of action as Nasivin, it is based on a similar active substance (*xylometazoline*) and has a higher market share than Vicks.⁴¹ [MERCK'S COMMERCIAL STRATEGY];⁴² and
 - b) The majority of market respondents considered that P&G's Vicks Sinex and Merck's Nasivin have differentiated pack designs and pricing.⁴³ P&G's Vicks Sinex is available only as a nasal spray, while Merck's Nasivin is available as a nasal spray and in the form of nose drops. Similarly to Merck, GSK also supplies Otrivin nasal spray and Otrivin nose drops in Austria. As concerns the price positioning Merck's Nasivin is available in a 10 ml package and is sold at EUR 9.5 or more.⁴⁴ GSK's Otrivin spray is sold at EUR 9.7 for 10 ml)⁴⁵. P&G's Vicks Sinex spray is available in a 15 ml package and is sold at EUR 8. Despite this relatively cheaper price, the market share of Sinex remains very limited, again indicating that the price is not the main parameter in consumers' choice of the product.
- (47) Finally, the market investigation did not reveal any substantiated concerns in relation to nasal decongestants in Austria.⁴⁶
- (48) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market for nasal decongestants in Austria.

4.3.3.2. Greece

- (49) In Greece, the Transaction gives rise to Group 1 markets for nasal decongestants at OTC 3 (01B2), OTC 4 (01B2A), ATC 3 (R1A) and ATC 4 (R1A7) levels and

³⁹ See replies to question 9 of Questionnaire Q1 – Competitors and replies to question 6 of Questionnaire Q2 – Customers (Austria).

⁴⁰ See replies to question 10 of Questionnaire Q1 – Competitors and replies to question 7 of Questionnaire Q2 – Customers (Austria).

⁴¹ See replies to question 10 of Questionnaire Q1 – Competitors and replies to question 7 of Questionnaire Q2 – Customers (Austria).

⁴² Form CO, Annex 7.6.

⁴³ See replies to question 11 of Questionnaire Q1 – Competitors and replies to question 8 of Questionnaire Q2 – Customers (Austria).

⁴⁴ See replies to question 11 of Questionnaire Q1 – Competitors, replies to question 8 of Questionnaire Q2 – Customers (Austria) and Form CO.

⁴⁵ Form CO, Table 13.

⁴⁶ See replies to question 12 of Questionnaire Q1 – Competitors and replies to question 9 of Questionnaire Q2 – Customers (Austria).

at the level of a combination of ATC 3 classes (R1A+R1B, and R1A+R1B+R3J+R6A).

- (50) The table below presents the Parties' market shares and the number of competitors with a market share above 5% in both value and volume for nasal decongestants in Greece over the last three years, following all plausible market delineations.

Level	Category Description	Market Group	Year	Market Shares (Value/Volume)			Number of Rivals > 5%
				P&G	Merck	Combined	
01B2A	Nasal decongestants in Spray	Group 1	2017	[0-5]%/ [0-5]%	[20-30]%/ [50-60]%	[30-40]%/ [50-60]%	At least 2
			2016	[0-5]%/ [0-5]%	[30-40]%/ [50-60]%	[30-40]%/ [50-60]%	At least 2
			2015	[0-5]%/ [0-5]%	[30-40]%/ [50-60]%	[30-40]%/ [50-60]%	At least 2
R1A7	Nasal decongestants	Group 1	2017	[0-5]%/ [0-5]%	[20-30]%/ [40-50]%	[20-30]%/ [40-50]%	At least 2
			2016	[0-5]%/ [0-5]%	[20-30]%/ [40-50]%	[30-40]%/ [40-50]%	At least 2
			2015	[0-5]%/ [0-5]%	[20-30]%/ [30-40]%	[30-40]%/ [40-50]%	At least 2
01B2	Nasal decongestants	Group 1	2017	[0-5]%/ [0-5]%	[20-30]%/ [30-40]%	[20-30]%/ [40-50]%	At least 1
			2016	[0-5]%/ [0-5]%	[20-30]%/ [30-40]%	[20-30]%/ [40-50]%	At least 2
			2015	[0-5]%/ [0-5]%	[20-30]%/ [30-40]%	[20-30]%/ [40-50]%	At least 2
R1A	Topical nasal preparations	Group 1	2017	[0-5]%/ [0-5]%	[20-30]%/ [30-40]%	[20-30]%/ [40-50]%	At least 2
			2016	[0-5]%/ [0-5]%	[20-30]%/ [30-40]%	[20-30]%/ [40-50]%	At least 2
			2015	[0-5]%/ [0-5]%	[20-30]%/ [30-40]%	[20-30]%/ [40-50]%	At least 2
R1A+R1B	Topical and Systemic nasal preparations	Group 1	2017	[0-5]%/ [0-5]%	[20-30]%/ [30-40]%	[20-30]%/ [40-50]%	At least 2
			2016	[0-5]%/ [0-5]%	[20-30]%/ [30-40]%	[20-30]%/ [40-50]%	At least 2
			2015	[0-5]%/ [0-5]%	[20-30]%/ [30-40]%	[20-30]%/ [40-50]%	At least 2
R1A+R1B+R3J+R6A	Topical and Systemic nasal preparations, Anti-leukotriene anti-asthmatics, and Systemic antihistamines	Group 1	2017	[0-5]%/ [0-5]%	[20-30]%/ [30-40]%	[20-30]%/ [40-50]%	At least 2
			2016	[0-5]%/ [0-5]%	[20-30]%/ [30-40]%	[20-30]%/ [30-40]%	At least 2
			2015	[0-5]%/ [0-5]%	[20-30]%/ [30-40]%	[20-30]%/ [30-40]%	At least 2

Source: Form CO

- (51) In 2017, the combined market share of the Parties reached [50-60]% in volume and [30-40]% in value for nasal decongestants in spray. The market share increment contributed by P&G is small under all market delineations in both value and volume ([0-5]% or less in volume and [0-5]% or less in value).
- (52) Post-Transaction, the combined entity will continue facing competition in Greece, in particular from GSK (Otrivin based on *xylometazoline*), which is currently the market leading nasal decongestant (holding a [50-60]% share in terms of value in

2017). In the market investigation, respondents identified GSK's Otrivin as the leading product for nasal decongestants in Greece.⁴⁷ Other players include Valeant Pharma (with Resoxym based on *oxymetazoline*) and Farmasyn (with Nasosyn based on *xylometazoline*).

- (53) Moreover, P&G's and Merck's nasal decongestants do not appear to compete closely in Greece:
- a) While some market participants mentioned that they are both based on the same molecule (*oxymetazoline*), many others considered that the closest substitute of Merck's Ronal is actually GSK's Otrivin. Otrivin has the same mode of action as Ronal, it is based on a similar active substance (*xylometazoline*) and has a higher market share than Vicks.⁴⁸ In addition, the Notifying Party submitted a study on nasal decongestant brand awareness in Greece, which shows that [SENSITIVE COMMERCIAL INFORMATION];⁴⁹ and
 - b) P&G's Vicks Sinex spray is available in a 15 ml package and is sold at EUR 4.1. This is cheaper than Merck's Ronal which is available in a 10 ml package and is sold at EUR 5.4. The price of GSK's Otrivin spray (EUR 5.1-5.5 for 10 ml) is closer to Merck's Ronal.
- (54) Finally, none of the market respondents considered that the Transaction could have an impact on the pricing or availability of nasal decongestants products in Greece.⁵⁰
- (55) In view of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market for nasal decongestants in Greece.

5. CONCLUSION

- (56) 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission

⁴⁷ See replies to question 9 of Questionnaire Q1 – Competitors and replies to question 6 of Questionnaire Q6 – Customers (Greece).

⁴⁸ See replies to questions 10-11 of Questionnaire Q1 – Competitors and replies to questions 7-8 of Questionnaire Q6 – Customers (Greece).

⁴⁹ Kantar Millward Brown, *Ronal Lovelymark Study*, April 2018, provided by the Notifying Party on 31 July 2018.

⁵⁰ See replies to question 12 of Questionnaire Q1 – Competitors and replies to question 9 of Questionnaire Q6 – Customers (Greece).