



EUROPEAN COMMISSION
DG Competition

***Case M.9274 - GLAXOSMITHKLINE / PFIZER
CONSUMER
HEALTHCARE
BUSINESS***

Only the English text is available and authentic.

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

Decision on the implementation of the commitments -
Purchaser approval

Date: 2.3.2020



Brussels, 2.3.2020
C(2020) 1326 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Dear Sir/Madam,

**Subject: Case M.9274 – GLAXOSMITHKLINE / PFIZER CONSUMER
HEALTHCARE BUSINESS
Approval of Angelini S.p.A as Purchaser of the ThermaCare divestment
business following your Reasoned Proposal of 15 December 2019 and the
Trustee’s opinion of 23 January 2020**

1. FACTS AND PROCEDURE

- (1) By decision of 10 July 2019 (the “Decision”) based on Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004,¹ the Commission declared the operation by which GlaxoSmithKline plc (“GSK” or the “Notifying Party”, the United Kingdom) acquires from Pfizer Inc (“Pfizer”, United States of America) sole control over Pfizer’s Consumer Health Business (“Pfizer CH”) compatible with the internal market, subject to conditions and obligations (the “Commitments”).²
- (2) Under the Commitments, GSK and Pfizer committed to divest Pfizer CH's topical pain management business carried out under the *ThermaCare* brand globally, including all relevant assets and staff that contribute to the current operation or are

¹ OJ L 24, 29.1.2004, p. 1 (the “Merger Regulation”).

² The capitalised terms in this decision have the meaning as set out in the Decision and the Commitments attached thereto, unless indicated otherwise.

necessary to ensure the viability and competitiveness thereof (the “Divestment Business”), to a suitable purchaser (the “Purchaser”). More specifically, the Commitments provide that the Divestment Business includes the Pfizer CH manufacturing facility dedicated to the production of ThermaCare products and all intellectual property rights and know-how relating to the ThermaCare products and brand, as well as all related assets.

- (3) By the reasoned proposal of 15 December 2019, GSK proposed Angelini S.p.A. (“Angelini”) for approval by the Commission as the Purchaser of the Divestment Business, with the exclusion of the North American rights to *ThermaCare*, and submitted the proposed Asset Purchase Agreement and related agreements (the “Proposed Agreements”).
- (4) On 23 January 2020, Grant Thornton UK LLP as the appointed Monitoring Trustee (the “Trustee”) submitted an assessment of Angelini’s suitability and independence as a Purchaser (the “Reasoned Opinion”) and the viability of the Divestment Business after its sale pursuant to clause 28 (viii) of the Commitments. It concluded that Angelini fulfils the Purchaser Criteria set out in Section D of the Commitments. In its Reasoned Opinion, the Trustee also concluded that, on the basis of the Proposed Agreements, the Divestment Business would be sold in a manner consistent with the Commitments.

2. ASSESSMENT OF THE PROPOSAL

- (5) According to paragraph 18 of the Commitments, in its assessment of the Proposed Agreements, the Commission has to verify that the Purchaser fulfils the Purchaser Criteria set out in Section D and that the Divestment Business is being sold in a manner consistent with the Commitments, including with their objective to bring about a lasting structural change in the market.

2.1. Introduction

2.1.1. Purchaser Criteria

- (6) As set out in paragraph 17 of the Commitments, the Purchaser must fulfil the following Purchaser Criteria:
 - (a) be independent of and unconnected to GSK and Pfizer and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);
 - (b) have experience in the marketing, promotion and supply of a portfolio of consumer healthcare products in the European Economic Area (“EEA”)³ (including but not necessarily limited to over-the-counter (“OTC”) pharmaceutical products);

³ For the purposes of this decision, although the United Kingdom withdrew from the European Union as of 1 February 2020, Union law continues to apply to the United Kingdom during the transition period. Accordingly, any references made to the EEA in this decision are meant to also include the United Kingdom.

- (c) have an established presence in and/or existing third-party access to the distribution channels typically used in the distribution of consumer healthcare products (including in particular pharmacies and where relevant mass retail) in each of the EEA markets in which the Divestment Business is active;
- (d) have experience in working with authorities and competent bodies in the EEA in obtaining necessary regulatory approvals and authorisations for commercialisation;
- (e) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors, including the ability to innovate; and
- (f) 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 Divestment Business.

2.1.2. *The proposed Purchaser*

- (7) Angelini is a privately-owned Italian company group with activities in several sectors. In particular, Angelini is mainly active in the pharmaceutical and personal care industries. In addition, the group is also active in the supply of (i) machinery for the production of disposable absorbent hygiene products and for refilling bottles of liquid detergent, (ii) perfumery and skincare & suncare, and (iii) wine.
- (8) In the pharmaceutical sector, Angelini's activities are primarily focused on the areas of pain and inflammation and nervous system diseases and disorders. Its best-known international brands are *Trittico*, *Tantum*, *Aulin*, and *Latuda*. Angelini's pharmaceutical products are marketed in over 50 countries worldwide.

2.2. Independence from GSK and Pfizer

- (9) The Notifying Party submits that Angelini and Angelini's affiliated companies are independent from both GSK and Pfizer, and from any of their Affiliated Undertakings.
- (10) The Trustee in its Reasoned Opinion concluded that there is no significant corporate link between Angelini and either GSK or Pfizer (and their Affiliated Undertakings). The Trustee also reviewed the existing business relations and contractual relations between Angelini and GSK/Pfizer, and concluded that they do not appear to be material to any party. In particular, such commercial relationships are limited and represent a negligible share of Angelini's revenues (as explained in more detailed in paragraph (12) below).
- (11) There are no structural or corporate relationships between Angelini or Angelini's affiliated companies and either GSK or Pfizer. In particular:
 - (a) There are no joint ventures between Angelini or Angelini's affiliated companies and either GSK or Pfizer.

- (b) Neither Angelini nor any of Angelini's affiliated companies or shareholders have any shares in GSK, Pfizer or their Affiliated Undertakings.
 - (c) Neither Angelini nor any of Angelini's affiliated companies has any common directorships, or memberships of management or supervisory boards with GSK, Pfizer or their Affiliated Undertakings.
 - (d) There are no cross shareholdings, commercial, management, board or investor links between Angelini or any of Angelini's affiliated companies and GSK or Pfizer or their Affiliated Undertakings.
- (12) There are no material supply agreements, sales relationships or other commercial links between Angelini or Angelini's affiliated companies and GSK, Pfizer or their Affiliated Undertakings.⁴
- (13) In light of all the above, the Commission concludes that Angelini fulfils the Purchaser criterion of being independent of and unconnected to GSK and Pfizer and their Affiliated Undertakings.

2.3. Experience in consumer healthcare in the EEA

- (14) The Notifying Party submits that Angelini has the proven expertise to maintain and develop the Divestment Business as a viable and active market force in competition with GSK and other competitors.
- (15) Angelini has an existing portfolio of consumer health pharmaceutical products in the EEA, including OTC brands such as *Tantum*, *Moment/Momendol*, *Boxagrippal*, and *Heumann*. In addition, beyond pharmaceuticals, Angelini is a 50% partner of a JV with Procter & Gamble (Fater) that is a significant player in the Italian market of absorbent products for personal hygiene, with brands including *Pampers*.
- (16) Angelini's experience in the area dates back to the 1980s. Angelini was the first company in Italy to launch a marketing strategy in relation to a pharmaceutical product, namely its *Moment* range of product, which is still a leading brand in Italy to date.
- (17) Based on data from the consultancy company Nicholas Hall, specialised in the OTC industry, Angelini ranked 15th among top European consumer healthcare companies by revenues in 2018.⁵ Angelini's *Tantum* brand is ranked as the 14th best-selling consumer healthcare brand in Europe.
- (18) In addition, according to data provided by Angelini and reviewed by the Trustee, Angelini's consumer healthcare products have outperformed the European market with an [...] % annual growth rate over the 2016-2018 period, compared with the 5% industry-wide.
- (19) In view of the above, and in line with the Trustee's Reasoned Opinion, the Commission concludes that Angelini fulfils the Purchaser criterion of having

⁴ Existing commercial relationships are limited to the following: [BUSINESS SECRET]. Angelini does not procure pharmaceutical products or active pharmaceutical ingredients from either GSK or Pfizer.

⁵ Nicholas Hall, DB6, 2018 data.

experience in the marketing, promotion and supply of a portfolio of consumer healthcare products in the EEA.

2.4. Established presence in and/or access to distribution channels in the EEA markets where the Divestment Business is active

- (20) Pfizer CH sells ThermaCare in 16 countries within the EEA, namely Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom.
- (21) Angelini has a direct presence in Austria, Bulgaria, Czechia, Germany, Greece, Hungary, Italy, Poland, Portugal, Romania, Slovakia, and Spain. Out of these, Austria, Germany, Italy, Portugal, and Spain are ThermaCare markets, which account for [...] % of total sales of ThermaCare in revenues for 2018 in the EEA.
- (22) In contrast, countries where Angelini lacks a direct presence represent only [...] % of ThermaCare's sales in the EEA. In addition, Angelini has existing relationships with and access to distributors in Belgium, Denmark, Finland, France, Ireland, Luxembourg, Netherlands, Norway, Sweden and the United Kingdom covering the quasi-totality of the remaining [...] %. The only exception is Malta, where supply is typically carried out by third party distributors or parallel importers.
- (23) Furthermore, Angelini has already begun the process of reaching out to potential distributors and third-party sales organisations in EEA countries where it lacks direct presence, for the distribution of ThermaCare, and anticipates to be able to proceed with sales as of the closing of the transaction by which it will acquire the Divestment Business.
- (24) Angelini makes sales through a variety of channels, including in particular pharmacies. A significant share of Angelini's sales of consumer healthcare products are made to pharmacies in both Germany and Italy, the two primary EEA markets for ThermaCare.
- (25) In view of the above, and in line with the Trustee's Reasoned Opinion, the Commission concludes that Angelini fulfils the Purchaser criterion of having an established presence, or existing third-party access to the distribution channels typically used in the distribution of consumer healthcare products, in the markets in the EEA in which the Divestment Business is active.

2.5. Experience with relevant regulatory authorities in the EEA

- (26) As a company already active in the OTC space, Angelini has experience with regulatory authorities relevant for the development and marketing of pharmaceutical products.
- (27) That experience covers in particular authorities in each country in the EEA where ThermaCare is currently sold (Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom), as well as the European Medicines Agency.
- (28) Angelini has submitted hundreds of marketing authorisations in the EEA.
- (29) In view of the above, and in line with the Trustee's Reasoned Opinion, the Commission concludes that Angelini fulfils the Purchaser criterion of having

experience in working with authorities and competent bodies in the EEA in obtaining necessary regulatory approvals and authorisations for the commercialisation of consumer healthcare products.

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

- (30) The Notifying Party submits that Angelini has the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with GSK/Pfizer and other competitors, including the ability to innovate.

2.6.1. Financial resources

- (31) Angelini is a privately held company. In 2018, the turnover of the Angelini group reached EUR [...] and its EBITDA EUR [...].
- (32) Angelini will pay in total USD [...] for the acquisition of the Divestment Business.⁶ The purchase price will be paid in full in cash upon closing. No external debt will be required from Angelini. Relatedly, completion of the acquisition is not dependant on obtaining bank financing.
- (33) The Trustee also reviewed the financial performance of Angelini over the past five years and, on the basis of the available information, considers that the company has a track-record of strong profitability and growth, supported by strong financials. As a result, the Trustee considers that Angelini has the financial resources to maintain and develop the Divestment Business as a viable and active market force in competition with the Parties and other competitors. The Commission agrees with that assessment.

2.6.2. Proven expertise

- (34) Angelini was founded in Italy in 1919, and has since continuously reinforced its presence in the pharmaceutical sector in Europe. The company started expanding internationally in the 1970s in Spain and Portugal and continued its expansion to date, organically as well as through acquisitions. The company recently consolidated its presence in Germany and Austria by acquiring the *BoxaGrippal* and *Heumann* brands from Sanofi.
- (35) The Trustee's Reasoned Opinion highlights that Angelini has successfully completed a number of acquisitions across a variety of business areas, including in the OTC space. It also stresses that Angelini has proven expertise in the area of R&D. As a result, the Trustee considers that Angelini has the expertise to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. The Commission agrees with that assessment.

2.6.3. Incentives

- (36) The business plan presented by Angelini for the Divestment Business appears to be consistent with the objective of creating a viable and active competitive force in the market with sales revenue increasing throughout the forecast period ([TIME PERIOD]).

⁶ Subject to adjustments to be defined by the time of the closing of the transaction.

- (37) Sales forecasts for the Divestment Business in the EEA and the United Kingdom under Angelini management are higher than those prior to its divestment, as of the second year of the period. Global sales are expected to exceed those under Pfizer's management as of [YEAR].
- (38) Angelini intends to serve all the markets in the EEA where ThermaCare is currently sold. Angelini has direct access to the large majority of pharmacies in the main EEA countries where ThermaCare is sold, including Austria, Germany, Italy, Portugal and Spain. It is also negotiating agreements with distributors to distribute ThermaCare in a number of other EEA countries. Furthermore, Angelini is also present in countries where ThermaCare is not currently sold and may be able to bring the product to market in these countries.
- (39) In addition, Angelini intends to invest in the development of the ThermaCare brand and products. In particular, Angelini intends to develop new sales channels, as well as product line extensions ([TIME PERIOD]), which were not considered by GSK.
- (40) The Trustee's Reasoned Opinion concludes that the purchase of the Divestment Business represents for Angelini an opportunity to consolidate its presence in the pharmaceutical sector in the EEA. After the acquisition of the Divestment Business, Angelini will be able to take advantage of the complementary product portfolio and offer a broader range of products to customers. The Commission agrees with that assessment.

2.6.4. Conclusion

- (41) In view of the above, and in line with the Trustee's Reasoned Opinion, the Commission concludes that Angelini fulfils the Purchaser criterion of having the financial resources, proven experience, and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with GSK and other competitors.

2.7. Absence of *prima facie* competition problems

- (42) The Notifying Party submits that the acquisition of the Divestment Business by Angelini will not create any competition concerns or delays in the implementation of the Commitments.
- (43) Angelini and Angelini's affiliated companies currently have a limited presence in the relevant product markets where the Divestment Business is active and that the activities of Angelini and the Divestment Business only overlap horizontally to a limited extent. Specifically, in the EEA, the activities of Angelini and the Divestment Business would only overlap in a market encompassing muscular pain relief topical / topical anti-rheumatics and analgesics (OTC3 class 02EA/ ATC3 class M2A) in three national markets, namely Italy, Portugal, and Spain. The Notifying Party submits that these three overlaps are unlikely to give rise to competition concerns. In each of these three markets, the combined market share of Angelini and the Divestment Business would remain largely below 25%. According to IQVIA data, numerous alternative players (at least twenty) larger than Angelini will remain active on each of these markets in the EEA following the acquisition by Angelini of the Divestment Business.

- (44) The acquisition of the Divestment Business by Angelini required merger control filings in Germany and Austria. Angelini received unconditional clearance for the proposed acquisition on 6 January and 15 January 2020 in Germany and Austria respectively.
- (45) Based on the above, the Commission considers, in line with the Trustee's Reasoned Opinion, that the acquisition of the Divestment Business by Angelini does not give rise to *prima facie* competition concerns.
- (46) This *prima facie* assessment is based on the information available for the purposes of this decision and does not prejudice the assessment of the acquisition of the Divestment Business by any competent competition authority under applicable merger control rules.

2.8. Deviation from the Commitments

- (47) According to paragraph 18 of the Commitments, the Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the Purchaser.
- (48) In the present case, the Proposed Agreements deviate from the Commitments, primarily in that they exclude from the scope of the Divestment Business the assets relating to the commercialization of ThermaCare in North America. In practice this implies that the following assets/personnel are excluded from the Divestment Business:
 - (a) Intellectual property used exclusively or predominantly for the commercialisation of ThermaCare-branded products in North America.
 - (b) The non-exclusive, royalty-free license to the Robax trademark in Canada for use in the field of OTC topical pain management. As the Robax brand is only relevant in North America (and more precisely in Canada), the license is excluded from the Divestment Business' scope.
 - (c) Two Key Personnel fulfilling the roles of Business Development Manager and Senior Sales Strategy Manager whose activities are focused on North America.
- (49) Angelini is not interested in acquiring the ThermaCare North American commercialization rights for the following reasons:
 - (a) [CONFIDENTIAL]
 - (b) [CONFIDENTIAL]
 - (c) [CONFIDENTIAL]
- (50) However, the Proposed Agreements still provide for the transfer of the ThermaCare production facility located in Albany, United States. Thus, under the Proposed Agreements, Angelini will acquire the plant that produces ThermaCare products.
- (51) The Notifying Party submits that, given the territorial nature of intellectual property rights (principally trademarks and patents in the present case), the carving up of

intellectual property rights on a territorial basis will not deprive the Divestment Business of the registered intellectual property rights that pertain to all territories outside of North America.

- (52) In addition, Angelini and GSK agreed to a supply agreement (the “MSA”), under which Angelini will supply GSK (or the future owner of the North America business) with ThermaCare products on a [CONFIDENTIAL] basis, for volumes corresponding to at least [...] million units of ThermaCare products yearly.⁷ The MSA involves a take-or-pay obligation for [TIME PERIOD] and has a duration until [DATE]. Under the MSA, GSK or the future owner of the North America business may terminate the arrangement on [TIME PERIOD] notice from the end of [TIME PERIOD]. Angelini may terminate on [TIME PERIOD] notice from the end of [TIME PERIOD].
- (53) Business plans prepared by Angelini demonstrate that excluding the North American commercialization rights and replacing such revenues with those generated via the MSA will not have a negative impact on the viability and competitiveness of the Divestment Business in the EEA. To the contrary, it will instead contribute to increase sales of the Divestment Business in the EEA over the next [TIME PERIOD] years.
- (54) Over the course of the divestment process, [Prospective bidders preferred to acquire only the ex-North America ThermaCare business].
- (55) The Trustee, having *inter alia* reviewed the business plans and Angelini’s forecasts, does not consider the exclusion of the North American commercialization rights under the conditions laid out above, and in particular in light of the MSA, to undermine the viability of the Divestment Business.
- (56) Based on the above, the Commission considers, in line with the Reasoned Opinion of the Monitoring Trustee, that the above-mentioned deviations from the Commitments do not affect the viability and competitiveness of the Divestment Business.

3. CONCLUSION

- (57) On the basis of the above assessment, the Commission approves Angelini as a suitable Purchaser of the Divestment Business.
- (58) On the basis of the Proposed Agreements, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
- (59) This decision only constitutes approval of the proposed Purchaser identified herein and of the Proposed Agreements. This decision does not constitute a confirmation that GSK and Pfizer have complied with their Commitments.

⁷ These volumes are in line with current sales of ThermaCare products in North America.

(60) This decision is based on Section D of the Commitments attached to the Decision.

For the Commission

(Signed)
Olivier GUERSENT
Director-General