



EUROPEAN COMMISSION
DG Competition

***Case M.9331 — DANAHER / GE
HEALTHCARE LIFE SCIENCES
BIOPHARMA***

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: 18/03/2020



EUROPEAN COMMISSION

Brussels, 18.03.2020
C(2020) 1845 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.9331 — Danaher/GE Healthcare Life Sciences Biopharma
Approval of Sartorius AG as purchaser of the Divestment Businesses
following your letter of 6 January 2020 and the Trustee's opinion of
27 February 2020**

1. FACTS AND PROCEDURE

- (1) By decision of 18 December 2019 (the 'Decision') based on Article 6(1)(b) in connection with Article 6(2) of the Merger Regulation¹, the Commission declared the operation by which Danaher Corporation ('Danaher') would acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of General Electric's Healthcare Life Sciences' Biopharma Business ('GE Biopharma', together with Danaher the 'Parties') compatible with the internal market subject to conditions and obligations (the 'Commitments').
- (2) In particular, the Commitments provide that Danaher will divest five businesses (jointly, the 'Divestment Business' or 'Divestment Businesses') to a suitable buyer within the First Divestiture Period.² The businesses to be divested are: (a) the FortéBio molecular characterisation business from Danaher's Molecular Devices

¹ Council Regulation No 139/2004, OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').

² Commitments to the European Commission, paragraph 2.

operating company (the ‘FortéBio molecular characterisation business’); (b) Danaher’s Pall Biotech SoloHill microcarriers and the particle validation standards (‘PVS’) business (‘Microcarriers Divestment Business’); (c) Danaher’s Pall Biotech chromatography resins business (‘Chromatography resins business’); (d) Danaher’s Pall Biotech chromatography hardware business comprising conventional chromatography columns, conventional and single-use technology chromatography skids and BioSMB continuous chromatography Process Development and Process Scale skids (‘Chromatography hardware business’); and (e) Danaher’s Pall Biotech Single-Use Tangential Flow Filtration (‘SUT TFF’) systems and stainless-steel Hollow Fibre TFF (‘SS HF TFF’) systems business (‘the TFF Divestment Business’).

- (3) The ‘FortéBio molecular characterisation business’ comprises various assets and one legal entity ([...]). It consists of Danaher’s business in label-free detection (a field within molecular characterization) that offers instruments and consumables for bio-layer interferometry (‘BLI’) under its Octet and BLItz product lines, as well as for surface plasmon resonance (‘SPR’) which it offers under its Pioneer product line. Its facilities are located in Shanghai (China) and Fremont (USA).
- (4) The ‘Microcarriers Divestment Business’ operates out of [Divestment Business’ organization structure] located in Ann Arbor, Michigan (USA). It manufactures and sells different types of microcarriers (e.g., plastic, collagen-coated, Fact III, Plastic Plus, Star-Plus and Hillex) used in various cell culture applications, vaccine, rProtein and stem cell production.
- (5) The ‘Chromatography resins business’ consists of [Divestment Business’ organization structure] located in Cergy (France) and it includes ion exchange resins, mixed mode resins, and affinity resins excluding Protein A.
- (6) The ‘Chromatography hardware business’ comprises conventional chromatography columns, conventional and single-use technology chromatography skids and BioSMB continuous chromatography process development (“PD”) and process scale skids. The Commitments oblige Danaher to [Divestment Business’ future locations].³ [Danaher’s commitments and location of its facilities].
- (7) The ‘TFF Divestment Business’ includes Danaher’s businesses in TFF systems (SUT) and hollow fibre TFF systems (conventional). Danaher’s facilities for SUT flat sheet and SS hollow fibre TFF skids are located in [...]. The Commitments provide that the personnel and activities in [...] for these products will move to a segregated section within the facility.⁴ The [...] activities for these products will be relocated to an already leased new location in [...].⁵ The [...] activities for these products will be relocated from the existing [...] to the available space currently occupied by the transferring [...] facility. Post-closing, the [...] activities will be relocated to a new location in the [...] area. Danaher will use its best efforts⁶ to help the Purchaser in this relocation exercise.

³ Commitments to the European Commission, Schedule 4, paragraph 2.

⁴ Commitments to the European Commission, Schedule 5, paragraph 2.

⁵ Commitments to the European Commission, Schedule 5, paragraph 2.

⁶ The Commitments to the European Commission, paragraph 1, define “best efforts” as being interpreted solely in light of the Commission’s decision pursuant to Article 6(1)(b) of the Merger Regulation to

- (8) The Divestment Businesses are described in Schedules 1 to 5 of the Commitments and they include all assets and staff that are necessary to ensure the viability and competitiveness of the Divestment Businesses.
- (9) Section C of the Commitments sets out the related commitments of Danaher. These include (i) preservation of viability, marketability and competitiveness of the Divestment Business; (ii) hold-separate obligations; (iii) ring-fencing; (iv) non-solicitation clause; and (v) due diligence.
- (10) In a submission dated 17 December 2019, Danaher proposed Mazars LLP as the Monitoring Trustee (the ‘Trustee’), pursuant to the Commitments.
- (11) By letter of 20 December 2019, the Commission approved Mazars LLP as the Trustee.
- (12) By letter of 6 January 2020, Danaher proposed Sartorius AG (‘Sartorius’ or the ‘Proposed Purchaser’) for approval by the Commission as purchaser of the Divestment Businesses and submitted the proposed Purchase Agreement of 18 October 2019 (the ‘Purchase Agreement’), the related schedules and the first two Amendments to it. On 25 January 2020, the Trustee submitted an assessment of Sartorius’ suitability as a purchaser, the final version of the Trustee’s Reasoned Opinion having been submitted on 27 February 2020 with a supplement dated 4 March 2020 (together referred to as ‘Final Reasoned Opinion’). In its assessment, the Trustee indicated in particular that the Proposed Purchaser fulfils the criteria of the purchaser requirements in section D of the Commitments attached to the Decision and that, on the basis of the Purchase Agreement, the Divestment Businesses would be sold in a manner consistent with the Commitments, subject to a number of amendments being made to the Purchase Agreement, as described in Chapter 3.
- (13) Upon the Commission’s request after its review of the Trustee’s Reasoned Opinion, on 27 February 2020, Danaher made changes to their transaction agreements of 18 October 2019 (see chapter 3) to bring them in line with the Commitments.
- (14) The proposed acquisition of the Divestment Business by Sartorius constituted a notifiable concentration under the Austrian and German competition law and Sartorius submitted merger notifications to the national competition authorities on 27 December 2019. On 13 January 2020, the German competition authority unconditionally cleared the transaction. The unconditional clearance from the Austrian competition authority was obtained on 25 January 2020. In addition to the approval from the Commission, the Proposed Purchaser has to be approved by the competition authorities of the U.S. and China.

declare the Concentration compatible with the internal market and the functioning of the EEA Agreement, the Merger Regulation and the general principles of EU law.

2. ASSESSMENT OF THE PROPOSED PURCHASER

2.1. Legal framework

(15) According to paragraphs 37 and 38 of the Commitments, when assessing the Proposed Agreement the Commission can refuse to give its approval if it is not shown that:

- the Purchaser is independent of and unconnected to the Parties and their affiliated undertakings (this being assessed having regard to the situation following the divestiture);
- the Purchaser has the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competition force in competition with the Parties and other competitors. In particular, the Purchaser:
 - (i) with regard to all Divestment Businesses must have proven expertise in the biotechnology process equipment and/or consumables industry;
 - (ii) with regard to all Divestment Businesses must have an established presence in at least one EU Member State other than the United Kingdom;
 - (iii) with regard to all Divestment Businesses must have at its disposal back-office support functions, such as information technology (“IT”) staff, IT operations, general back-office software (e.g., an enterprise resource planning system and payroll system), HR functions, finance, accounting, tax, and legal and compliance support; and
 - (iv) with regard to the SoloHill microcarriers and PVS business pursuant to Schedule 2, the Chromatography resins business pursuant to Schedule 3, the Chromatography hardware business pursuant to Schedule 4 and the SUT TFF and SS HF TFF systems businesses pursuant to Schedule 5 must have at its disposal a salesforce with experience of selling and promoting biotechnology process equipment and/or consumables in EMEA, the Americas and Asia, including China.
- the acquisition of the Divestment Business by the Purchaser does not create *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed; and
- the Divestment Businesses are sold in a manner consistent with the Decision and with the Commitments.

2.2. Description of the Proposed Purchaser

(16) The Proposed Purchaser, Sartorius, is an international pharmaceutical and laboratory equipment supplier, covering the segments of Bioprocess Solutions and Lab Products & Services. Sartorius’ Lab Products & Services Division is focused on serving the needs of laboratories performing research and quality control at pharma and biopharma companies and those of academic research institutes. The Bioprocess Solutions Division with its product portfolio focusing on single-use solutions helps customers to manufacture biotech medications and vaccines.

- (17) Sartorius has been growing annually, its sales revenues doubled over the last five years and the group has been regularly expanding its portfolio by acquisitions of complementary technologies. In fiscal year 2019, Sartorius generated sales revenues of around EUR 1.83 billion. At the end of 2019, more than 9 000 people were employed at Sartorius' approximately 60 manufacturing and sales sites worldwide.⁷

2.3. Independence from the Parties

2.3.1. *Danaher's* submissions

- (18) Danaher submits that Danaher and Sartorius are independent of, and unconnected to each other. Danaher also submits that Sartorius and Danaher have no cross-shareholdings and no cross-directorships. Any contractual relationships between Sartorius and the Parties would be regular and non-critical commercial agreements which would not lead to any form of dependency of Sartorius on the Parties or *vice versa*.

2.3.2. *The Trustee's* Final Reasoned Opinion

- (19) In its Final Reasoned Opinion, the Trustee submits that Sartorius is likely to be independent of and unconnected to Danaher and GE Biopharma (and their respective affiliated undertakings). After carrying out research on the independence of all Parties involved, the Trustee confirms that there are no joint ventures in which Danaher or GE Biopharma participate with Sartorius, as well as no cross-shareholdings or cross-directorships between Sartorius and its affiliated undertakings, on the one hand, and Danaher or GE Biopharma and their affiliated undertakings, on the other hand. Moreover, the existing commercial relationships that are in place between Sartorius and any of Danaher or GE Biopharma are concluded at arm's length and they appear to be immaterial in view of their overall size in terms of revenues. The value generated by the agreements between Sartorius and Danaher would amount to approximately [...] % of Sartorius' 2018 annual turnover. In addition, the value generated from the supply agreements between Sartorius and GE Biopharma amounts to approximately [...] % of Sartorius' yearly turnover. Danaher's sales to Sartorius amounted for [...] % of Danaher's total sales figures for 2018 and Danaher's purchases from Sartorius represented [...] % of Danaher's total revenues. GE Biopharma's combined revenues from Sartorius for 2018 and 2019 represent only approximately [...] % of GE Biopharma's total revenues and GE Biopharma's purchases from Sartorius represent [...] % and [...] % respectively of GE Biopharma's total revenues for 2018 and 2019. In terms of materiality, the Trustee therefore considers that Danaher's and GE Biopharma's sales to Sartorius are *de minimis* in comparison to each of the Parties' total revenues and should not be considered an impediment to the independence of Sartorius.
- (20) The Trustee also extended its assessment of independence of Sartorius from Danaher and GE Biopharma to the main ordinary shareholders of Sartorius⁸, namely (i) the community of heirs of Mr. Horst Sartorius, the founder of Sartorius, who jointly hold [...] % of the ordinary shares in Sartorius; and (ii) Bio-Rad Laboratories GmbH ('Bio-Rad'), the largest minority shareholder of Sartorius.

⁷ <https://www.sartorius.com/en/company/newsroom/downloads-publications>

⁸ 50% of the shares in Sartorius are ordinary shares including voting rights, whereas the remaining 50% are preference shares without voting rights.

- (21) The Trustee also takes a position with regard to the community of heirs of Mr. Horst Sartorius, by holding that Dr Lothar Kappich is the executor of the community, the chairman of the Supervisory Board of Sartorius and of the non-executive directors in the Board of Directors of Sartorius Stedim Biotech S.A. In his role as executor, Dr. Kappich executes the last will of Mr. Horst Sartorius in the (financial) interest of the community of heirs. Dr. Kappich does not use his positions as a member of the Supervisory Board of Sartorius and/or non-executive director in Sartorius Stedim Biotech S.A.'s Board of Directors to get involved in the day-to-day management of Sartorius or any of the companies of the Group in the interest of the community of heirs or other shareholders. [Sartorius' information on independence].
- (22) The Trustee points out that there are no links between Dr. Kappich and Danaher and/or GE Biopharma on the basis of the following submissions:
- i. Dr. Kappich does not exercise control over Danaher and/or GE Biopharma or over each of their subsidiaries and vice versa;
 - ii. Dr. Kappich is not a member of the board of either Danaher and/or GE Biopharma or any of their subsidiaries;
 - iii. Dr. Kappich does not hold any material interest in any entity in which Danaher and/or GE Biopharma also hold a material interest; and
 - iv. Dr. Kappich does not participate in any joint ventures in which Danaher and/or GE Biopharma also participate.
- (23) On this basis, the Trustee concludes that the community of heirs holding jointly over 50% of the shares in Sartorius, as well as Dr. Kappich, as executor of the last will of Mr Horst Sartorius, are independent from Danaher and/or GE Biopharma.
- (24) The Trustee notes that Bio-Rad is a subsidiary of the US-listed company Bio-Rad Laboratories, Inc. listed on the New York Stock Exchange, and that Sartorius confirmed that Bio-Rad is a minority shareholder without any strategic veto rights or influence over Sartorius' day-to-day management. The Trustee also notes that Danaher confirmed that it had only some commercial links with Bio-Rad, but no other management, board or investor links; Danaher purchases from Bio-Rad representing [...]% of Danaher's total revenues and Danaher's sales to Bio-Rad representing [...]% of Danaher's total sales figures for 2019. After reviewing the information from Danaher and Sartorius regarding their relationship with Bio-Rad, the Trustee concludes that Bio-Rad is independent from Danaher and GE Biopharma.

2.3.3. *The Commission's assessment*

(25) The Commission, based on its assessment of the information in the file and having in particular regard to the Trustee's Final Reasoned Opinion, and specifically taking into account that:

- market participants did not raise any concerns about Sartorius being an independent operator;⁹
- there are no cross-shareholdings between Sartorius and the Parties, including their affiliated undertakings;
- no joint ventures exist in which Danaher and/or GE Biopharma participate with Sartorius;
- Sartorius does not share any of its directors with any of Danaher's or GE Biopharma's executive or non-executive directors; and
- the existing commercial relationships which are in place between Sartorius and any of Danaher or GE Biopharma are immaterial compared to their overall revenues and the value of the Divestment Business;¹⁰

considers that the Proposed Purchaser meets the requirement of being independent of and unconnected to the Parties or their affiliated undertakings.

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

2.4.1. *Danaher's submissions*

(26) Danaher submits that Sartorius will be financially able to ensure that the Divestment Businesses remains a viable competitor. Danaher stresses that Sartorius is a leading international laboratory and process technology provider for the bio-technology and pharmaceutical industries, with production facilities in 110 countries and approximately 8 800 employees. It further argues that in 2019, Sartorius expects revenues of approximately EUR 1.8 billion and an EBITDA margin of approximately 27%.

(27) Moreover, Danaher points out that during the 2013-2017 period, Sartorius has acquired [several] businesses (for a total value of USD [...], GBP [...] and EUR [...]). Sartorius successfully integrated all these businesses, allowing them to reach Sartorius profitability levels within [...]. Sartorius has demonstrated the management capability and dedication to successfully integrate significant businesses into its operations.

⁹ See responses to question F.A.6 of the Commission's market test of 29 November 2019.

¹⁰ In addition to the Trustee's assessment of the commercial relationships between Sartorius on the one hand and Danaher and GE Biopharma on the other, the Commission notes that the purchase price to be paid by Sartorius for the Divestment Businesses amounts to USD 825 million (EUR 735.3 million at the average ECB exchange rate from 31.12.2019), while the contracts with Danaher generated in 2018 a value for Sartorius of around EUR [...]. This would only amount to less than [...] % of the price of the Divestment Businesses.

- (28) Danaher states that Sartorius has proven expertise and the right incentives for the Divestment Businesses to thrive. Sartorius has a proven track record as a supplier of both biotechnology process equipment and consumables. Sartorius is already a leading player in several bioprocessing markets like SUT rocking bioreactors, SUT stirred tank bioreactors, SUT mixers and membrane chromatography and active in filtration consumables and systems. At the same time, the Divestment Businesses complement Sartorius' portfolio allowing for synergies.
- (29) Danaher stresses that, in addition to the United Kingdom, Sartorius is present in seven EU Member States, including Germany where Sartorius is headquartered, and has the required back-office infrastructure to integrate and support the Divestment Businesses. As a worldwide operating business with production facilities throughout the world, employing 8 800 people, Sartorius has all the required back-office functions to integrate and support the Divestment Businesses. Moreover, Sartorius' sales organisation is equipped to support the Divestment Businesses around the world, as Sartorius already sells single and multiple products and end-to-end solutions for the development and manufacturing of mAbs, vaccines, and regenerative medicines.

2.4.2. *The Trustee's Final Reasoned Opinion*

- (30) Considering the performance of the business and the financial position, the Trustee's view is that Sartorius has sufficient financial resources to purchase and develop the Divestment Businesses. In order to draw this conclusion, the Trustee took into consideration in particular that Sartorius had secured the required financing for the purchase of the Divestment Businesses and the fact that Sartorius has grown significantly in recent years (CAGR 2014 – 2018: [...]%) also improving its profitability at the same time (EBITDA margin 2018: 25.9%).
- (31) The Trustee considers that Sartorius has used a reasonable and professional planning approach to develop its business plans and it adapted the business plans to include also the Divestment Businesses. The financial projections presented by Sartorius show a growing and profitable business and the business plans' rates and margins are estimated for the Divestment Businesses as well as for the Sartorius business and appear reasonable.
- (32) The Trustee's assessment takes into account that Sartorius indeed sees the Divestment Business as an attractive investment opportunity. In the Trustee's view, Sartorius' compelling strategic rationale is based in particular on the complementarity of the Divestment Businesses to the existing operations of Sartorius and consistent with its overall market strategy.
- (33) The Trustee further observes that Sartorius is in a good state of preparedness to ensure a smooth transition immediately after the transfer of ownership over the Divestment Business. Sartorius has assembled a large and experienced team to integrate the Divestment Businesses and the efforts made in the transition period are well-planned, well-resourced and are being executed with focus. Sartorius expects to complete the integration of these businesses within [...] post-closing.
- (34) The Trustee also points out that (i) Sartorius has successfully integrated [several] businesses in recent years, has proven expertise in the biotechnology process equipment and consumables industry (paragraph 37(b) (i) of the Commitments); (ii) Sartorius has an established presence in at least one EU Member State other than

the United Kingdom (37(b)(ii) of the Commitments); (iii) Sartorius has the required back-office functions to support and integrate the Divestment Business (paragraph 37(b) (iii) of the Commitments); and (iv) Sartorius has at its disposal a salesforce with experience of selling and promoting biotechnology process equipment and/or consumables in EMEA, the Americas and Asia, including China (paragraph 37(b)(iv) of the Commitments).

- (35) The Trustee concludes that the Proposed Purchaser has the capabilities and the proper incentives to maintain and develop the Divestment Businesses.

2.4.3. *The Commission's assessment*

- (36) The Commission, based on its assessment of the information in the file and having in particular regard to the Trustee's Final Reasoned Opinion, the favourable opinion of market participants,¹¹ and taking in particular into account that Sartorius (i) has a solid financial position combined with a positive outlook based on a growing and profitable business; (ii) secured the financing of the acquisition of the Divestment Business; (iii) has proven expertise in the bioprocessing industry; (iv) managed to successfully integrate acquired businesses in the past; and (v) has developed a business plan demonstrating its incentives to develop the Divestment Businesses¹², which complement Sartorius' portfolio, considers that the Proposed Purchaser meets the requirement of having the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competition force in competition with the Parties. The Commission is further satisfied that Sartorius meets the special purchaser criteria set out in paragraph 37 (b)(i) to (iv) of the Commitments, as it (i) is an established player in the bioprocessing industry; (ii) has an established presence in an Member State; (iii) has at its disposal all the required back-office functions to integrate and support the Divestment Businesses; and (iv) has at its disposal a salesforce with experience of selling and promoting biotechnology process equipment and/or consumables in EMEA, the Americas and Asia, including China.

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

2.5.1. *Danaher's* submissions

- (37) In its Reasoned Proposal, Danaher submits that the acquisition of the Divestment Businesses by Sartorius does not raise competition concerns. It also puts forward that the transaction does not have a Union dimension within the meaning of Article 1(2) and (3) of the Merger Regulation and it would only need to be notified in Germany and Austria within the EU.
- (38) Moreover, Danaher states that the proposed acquisition does not raise any competition concerns in either jurisdiction, or anywhere else in the world.

¹¹ A large majority of those taking a position have indicated to consider Sartorius as a suitable buyer for the Divestment Business; MT1 – market test, question F.A.6.

¹² The Commission is also satisfied that the TFF Divestment Business is a attractive business for Sartorius because this acquisition will enable Sartorius to quickly expand its offerings in this area and provide more choices to a broader range of customers: the new products will appeal to customers who are not looking for a multi-functional system (Sartorius current offering being confined to the FlexAct UD system who appeals to customers who want to use a single system for multiple applications, including SUT TFF).

- (39) Danaher depicts Sartorius as having a complementary activity to the Divestment Businesses:
- The ‘FortéBio molecular characterisation business’ – Sartorius already has a bioanalytical portfolio¹³ that could easily integrate FortéBio’s high throughput affinity measurement technologies to have a more complete characterization of therapeutic antibody candidates;
 - The ‘Microcarriers Divestment Business’ – there is no horizontal overlap or vertical link in this segment;
 - The ‘Chromatography resins business’ – the business would complement Sartorius’ offering in membrane chromatography with its Sartobind technologies for both classical multi-use and single-use processes;
 - The ‘Chromatography hardware business’ – this business would complete Sartorius’ line creating a full-range business that would add operational efficiencies and synergies;
 - The ‘TFF Divestment Business’ – Danaher stated that Sartorius has minimal sales of SUT TFF systems and already provides stainless steel Flat Sheet TFF systems and consumables. Sartorius’ portfolio would be complementary to the acquired products.

2.5.2. *The Trustee’s Final Reasoned Opinion*

- (40) For each of the Divestment Businesses, the Trustee assessed in detail whether there are any horizontal or vertical relationships with Sartorius activities, which may give rise to *prima facie* competition concerns:
- With respect to the ‘FortéBio molecular characterisation business’, the Trustee finds that an acquisition by Sartorius would not lead to any horizontal or vertical overlaps which would give rise to *prima facie* competition concerns in the market for label free detection systems because there are no overlaps in this area. While Sartorius has a device for cell imaging based on label-free technology, it cannot be regarded as substitutable with the FortéBio business.
 - In relation to the ‘Microcarriers Divestment Business’, the Trustee finds that Sartorius does not offer any microcarriers or microbeads used in bioreactors upstream to promote attachment and growth of adherent cells nor custom-manufactured defect test kits, therefore there are no horizontal overlaps in this area. Also, the Trustee did not find any vertical links which would give rise to *prima facie* competition concerns¹⁴. In light of the above the Trustees’

¹³ IncuCyte live-cell imaging system, the iQue instruments, software and reagent platforms for high-throughput flow cytometry and the multifunctional and multi-parallel bioreactor systems ambr.

¹⁴ The Trustee found marginal vertical links between the Divestment Business and Sartorius’ offering of rocking and stirred tank bioreactors. In the Commission’s view, the link cannot be viewed as vertical since microcarriers are not used for the manufacture of bioreactors. In other words, microcarriers are not an input for the manufacture of bioreactors. Microcarriers belong to somewhat neighbouring markets since they can be used in combination with cell culture media inside rocking and stirred tank bioreactors for the growth of adherent cells.

conclusion is that there are no *prima facie* competition concerns in the markets for the various microcarriers products;

- As regards the ‘Chromatography resins business’ and ‘Chromatography hardware business’, the Trustee submits that there are no horizontal overlaps or vertical links between Sartorius and the Divestment Business in the markets for the various chromatography products. Sartorius offers only membrane chromatography (the Sartobind technology), but it is not active in conventional resin chromatography which would include resins, conventional SS or SUT chromatography columns and skids. With regard to the BioSMB technology (a special, multi-column continuous operating mode developed for conventional resin chromatography, which constitutes an evolution of single-use systems), Sartorius does not have any technology in its current portfolio. In conclusion, the Trustee finds that the acquisition of the ‘Chromatography resins business’ and the ‘Chromatography hardware business’ by Sartorius would not result in *prima facie* competition concerns.
- The Trustee also specifically analysed Pall's Ultrosor G Fetal Calf Serum substitute business (‘Ultrosor G’) that is also part of Pall's Resin Business. The horizontal overlap between Ultrosor G and Sartorius in an overall market for all cell culture sera segment would not exceed a combined [0-5]%¹⁵. The Trustee concludes that the existing horizontal overlap and the absence of vertical links would not give rise to *prima facie* competition concerns.
- As regards the ‘TFF Divestment Business’, the Trustee submits:
 - Based on the market share data at its availability, the Trustee identified a moderate overlap between Sartorius’ and the TFF Divestment Business’ activities in a potential market that encompass all tangential flow filtration (“TFF”) systems or stainless-steel (“SS”) TFF systems, and a *de minimis* overlap in a potential market for single-use technology (“SUT”) TFF systems.
 - The Commission in this regard recalls that its phase I market investigation had revealed that competitors’ market positions had been overestimated by the Parties.¹⁶ Due to the confidential nature of the evidence collected in the market investigation, the Commission was not in a position to share this with the Trustee. The market share data at the Trustee’s availability was therefore limited to those provided by the Notifying Party, as well as the non-confidential market share ranges to the extent these were disclosed in the Commission’s decision.¹⁷

2.5.3. The Commission’s assessment

- (41) The Commission, on the basis of the information in its file, and having in particular regard to the fact that the proposed transaction received unconditional clearances from the German and Austrian national competition authorities, as well as the Trustee’s Final Reasoned Opinion and other market participants, made the following

¹⁵ Paragraphs 147 – 163 of the M.9331 - Danaher/GE Healthcare Life Sciences Biopharma Decision (‘Decision’).

¹⁶ M.9331 Danaher / GE Healthcare Life Sciences Biopharma, paragraph 291.

¹⁷ M.9331 Danaher / GE Healthcare Life Sciences Biopharma, section 4.5.3.3.

assessment regarding the *prima facie* competition concerns that could rise from Sartorius' acquisition of the Divestment Businesses:

2.5.3.1. Molecular characterisation

- (42) Danaher's FortéBio Business offers label-free detection systems for molecular analysis.
- (43) Sartorius offers a wide range of analytical life science instruments for cell analysis, through its IncuCyte and iQue instruments.
- (44) The Commission in the merger investigation considered label-free detection to constitute a distinct market.¹⁸
- (45) Therefore, there is no horizontal overlap between the FortéBio Business and Sartorius. While Sartorius' iQue instrument employs label-free technology, it is not used for molecular characterisation as its measurements take place at the cellular (and not molecular) level. In addition, there are no vertical relationships between FortéBio and Sartorius.
- (46) On this basis, the Commission does not consider there to be *prima facie* competition concerns in the market for label-free detection systems.

2.5.3.2. Microcarriers

- (47) With respect to the 'Microcarriers Divestment Business' – the Divestment Business produces and sells different types of microcarriers (e.g., plastic, collagen-coated, Fact III, Plastic Plus, Star-Plus and Hillex).
- (48) Since Sartorius does not offer any types of microcarriers and there are no vertical links with the Divestment Business, the acquisition of the Divestment Business by Sartorius does not result in any horizontal or vertical overlaps, which could give rise to *prima facie* competition concerns.
- (49) Moreover, the Commission carried out an assessment of *prima facie* competition concerns due to conglomerate effects given that microcarriers can be used in combination with cell culture media to grow certain adherent cells in rocking and stirred tank bioreactors. Hence, the different markets for microcarriers could be viewed as neighbouring the markets for rocking and stirred tank bioreactors.
- (50) Danaher's 2018 market shares in the different markets for microcarriers, which will be transferred to Sartorius with the transfer of the Microcarriers Divestment Business, ranged between [0-5]% and [10-20]%.¹⁹

¹⁸ M.9331 Danaher / GE Healthcare Life Sciences Biopharma, paragraph 564.

¹⁹ M.9331 Danaher / GE Healthcare Life Sciences Biopharma, Tables 5-9.

- (51) Sartorius' 2018 market shares in rocking bioreactors amounted to [40-50]% and [20-30]% at worldwide and EEA levels respectively.²⁰ Its market 2018 market shares for stirred tank bioreactors amounted to [30-40]% and [30-40]% at worldwide and EEA levels respectively.²¹
- (52) The Commission considers that no risk of anticompetitive foreclosure arises from the combination of Sartorius' activities in rocking and stirred tank bioreactors with the Microcarriers Divestment Business because Sartorius would lack the ability to engage in such behaviour: (i) Sartorius' market shares in the relevant bioreactor markets remain at a level, which typically does not give rise to conglomerate concerns, (ii) the complementarity between microcarriers and rocking or stirred tank bioreactors only arises in relation to the growth of specific adherent cells, given that rocking and stirred tank bioreactors are mainly used for the growth of suspension cells.²² This limits the pool of common customers, that is to say customers who buy microcarriers and rocking or stirred tank bioreactors. A large pool of common customers is however a pre-requisite for any conglomerate foreclosure concern pursuant to paragraph 100 of the Non-Horizontal Merger Guidelines²³, and (iii) customers in the bioprocessing generally purchase the different bioprocessing products separately and clearly prioritise quality and the "best technical fit" in their purchasing decisions, which counteracts possible conglomerate foreclosure strategies such as tying and bundling and would thus limit Sartorius' ability to engage in such behaviour.²⁴
- (53) In light of the foregoing, the Commission considers that the acquisition of the Microcarriers Divestment Business by Sartorius does not give rise to *prima facie* competition concerns of a conglomerate nature.

2.5.3.3. Chromatography resins

- (54) As regards the 'Chromatography resins business' - the Divestment Business manufactures and sells different types of chromatography resins (ion exchange resins, mixed mode resins, and affinity resins).
- (55) Sartorius offers membrane chromatography products based on the Sartobind technology and it does not offer conventional chromatography resins.
- (56) The Commission in the merger investigation considered that resin-based chromatography and membrane chromatography are not part of the same relevant product market.²⁵
- (57) In conclusion, since there are no horizontal overlaps or vertical relationships between Sartorius and the 'Chromatography resins business', the Commission considers that there are no *prima facie* competition concerns in the relevant markets of the various chromatography resins.

²⁰ M.9331 Danaher / GE Healthcare Life Sciences Biopharma, Table 1.

²¹ M.9331 Danaher / GE Healthcare Life Sciences Biopharma, Table 2.

²² In this context, it is also necessary to recall that not all adherent cells are grown by using microcarriers, but fixed bed bioreactors are also used for the growth of certain adherent cells.

²³ Guidelines on the assessment of non-horizontal mergers under the council Regulation on the control of concentrations between undertakings, Official Journal, 2008/C 264/07.

²⁴ M.9331 Danaher / GE Healthcare Life Sciences Biopharma, paragraph 503.

²⁵ M.9331 Danaher / GE Healthcare Life Sciences Biopharma, paragraph 378.

- (58) In relation to the Ultrosor G product that was divested with the ‘Chromatography resins business’, the Divestment Business’ product is an animal based serum substitute that can replace foetal calf serum only for research and diagnostics applications.
- (59) Sartorius also offers animal-based sera, including foetal bovine serum.
- (60) The Commission considers as plausible both (i) an overall market for cell culture sera; and (ii) the narrower market for Ultrosor G serum substitute.
- (61) Given the limited increments brought by the Divestment Business ([0-5]% globally or in the EEA), the low combined market share of Sartorius and the Divestment Business of less than [0-5]% in an overall market for cell culture sera, and the narrower market for Ultrosor G serum substitute globally or in the EEA²⁶ and the absence of vertical links in either of these markets, no *prima facie* competition concerns arise.²⁷

2.5.3.4. Chromatography hardware

- (62) In relation to the ‘Chromatography hardware business’ - the Divestment Business comprises conventional chromatography columns, conventional (SS) and SUT chromatography skids, and BioSMB continuous chromatography skids (the BioSMB skids include a process development offering known as BioSMB PD and two process scale offerings known as BioSMB Process 80 and 350).
- (63) Sartorius does not offer chromatography columns, SS and SUT skids or any continuous chromatography skids.
- (64) Sartorius offers only membrane chromatography products based on the Sartobind technology, which is a distinct market from traditional chromatography using resins in combination with skids and columns as explained in paragraph (56). Thus, there are no horizontal overlaps in the field of chromatography. Neither, are there any vertical overlaps.
- (65) However, Sartorius is [market position] in membrane chromatography with a [50-60]% market share. Despite this high share, the Commission considers that no risk of anticompetitive foreclosure arises from the combination of Sartorius’ activities in membrane chromatography with the Chromatography Divestment Business because Sartorius would lack the ability to engage in such behaviour for the following reasons: (i) there are limited applications where membrane chromatography products are used in combination with a chromatography skid, notably applications requiring little absorptive capacity, but higher faster flow through rates.²⁸ This limits the pool of common customers, that is to say customers who would buy, or consider buying, membrane chromatography products in combination with a chromatography skid. A large pool of common customers is however a pre-requisite for any conglomerate foreclosure concern pursuant to paragraph 100 of the Non-Horizontal Merger Guidelines and (ii) customers in the bioprocessing generally purchase the different bioprocessing products separately and

²⁶ Trustee Reasoned Opinion, Table 24.

²⁷ Form CO, paragraph 526.

²⁸ Form CO, paragraph 1747.

clearly prioritise quality and the “best technical fit” in their purchasing decisions, which counteracts possible conglomerate foreclosure strategies such as tying and bundling and would thus limit Sartorius’ ability to engage in such behaviour.

- (66) In light of the foregoing, the Commission considers that the acquisition of the Chromatography Divestment Business by Sartorius does not give rise to *prima facie* competition concerns of a conglomerate nature.
- (67) In conclusion, since there are no horizontal or vertical overlaps between Sartorius and the ‘Chromatography hardware business’ and conglomerate foreclosure concerns can be excluded, the Commission considers that there are no *prima facie* competition concerns in the relevant markets for stainless steel chromatography skids, SUT chromatography skids, continuous chromatography skids or traditional non-prefilled columns – as the markets were defined in the merger decision.

2.5.3.5. TFF systems

- (68) The TFF Divestment Business is comprised of Danaher’s flat sheet TFF systems (SUT) and hollow fibre TFF systems (conventional).
- (69) Sartorius is active in flat sheet TFF systems (SUT and conventional).
- (70) The Commission in the merger investigation considered potential product markets for overall bioprocessing filtration systems, DFF systems (overall and segmented by SUT and conventional technology), TFF systems (overall and segmented by SUT and conventional technology), flat sheet TFF systems (overall and segmented by SUT and conventional technology) and hollow fibre TFF systems (overall and segmented by SUT and conventional technology).²⁹ The Commission left open whether markets are global or EEA-wide.
- (71) A horizontal overlap between Sartorius’ and the TFF Divestment Business’ activities therefore exists in overall bioprocessing filtration systems, TFF systems (overall and segmented by SUT and conventional technology), and flat sheet TFF systems (SUT), both at worldwide and EEA levels.
- (72) In the notification of the main transaction, the Parties provided the Commission with market share data for 2018. In the market investigation, the Commission found that these were not fully reliable, in particular for certain sub-segments (flat sheet TFF, SUT and hollow fibre SUT and SS).³⁰ Therefore, the Commission performed a market reconstruction for these segments. In the purchaser approval process, the Commission repeated this exercise for the market share data of 2019, in particular for flat sheet TFF (SUT), where an overlap arises between the activities of Sartorius and the TFF Divestment Business.
- (73) In a potential **overall market for bioprocessing filtration systems**, based on the 2018 market share data provided by the Parties, the combined entity would have a worldwide market share of [20-30]%, with an increment of [0-5] percentage points, or [20-30]% and [10-20] percentage points respectively for the EEA. However, based on the 2018 turnover data obtained in the Commission’s market

²⁹ M.9331 Danaher / GE Healthcare Life Sciences Biopharma, paragraph 253.

³⁰ M.9331 Danaher / GE Healthcare Life Sciences Biopharma, paragraph 291.

reconstruction, this market would not be affected, with combined market shares of [10-20]% at worldwide and EEA levels based on the Commission's market reconstruction.³¹

- (74) The Commission considers that the combined market share levels in an overall market for bioprocessing filtration systems as well as the increment remains moderate at worldwide and EEA levels.
- (75) In an overall market for bioprocessing filtration systems, the TFF Divestment Business and Sartorius are not close competitors. While Sartorius' [revenue structure] DFF systems and flat sheet TFF systems (conventional), the Divestment Business is not active in these segments.
- (76) In this light, the Commission does not consider there to be *prima facie* competition concerns in the potentially relevant market for bioprocessing filtration systems.
- (77) A potential **overall market for TFF systems** would not be affected worldwide or in the EEA on the basis of the market shares submitted by the Parties or on the basis of the market share data obtained by the Commission in its market reconstruction (2018 data).
- (78) Also a potential worldwide market for **TFF systems (conventional)** would not be affected according to the Parties' market share data. According to the market reconstruction, the combined market share would amount at worldwide level to [10-20]% (2018) data.³² Moreover, there is no overlap in the EEA as the TFF Divestment Business does not sell conventional TFF systems in the EEA.
- (79) In the potential market for **TFF systems (SUT)**, based on the Parties' market share data for 2018, the combined entity would have a worldwide market share of [30-40]% with an increment of [10-20]%, or of [30-40]% with an increment of [10-20]% in the EEA. As mentioned, these estimates by the Parties did not prove to be reliable. According to the Commission's market reconstruction, the Parties particularly overstated Sartorius' 2018 revenues in TFF systems SUT. Based on the Commission's market reconstruction, in 2018, the combined entity would hold a share of [20-30]% with an increment of less than [0-5]% at worldwide and EEA levels. As such, this combined market share level and the low increment would not raise *prima facie* competition concerns. Moreover, as in this potential market both the Divestment Business and Sartorius are only active in flat sheet TFF systems (SUT) and not in hollow fibre TFF systems (SUT), the market for **TFF systems (SUT)** can be assessed together with the relevant for market flat sheet TFF systems (SUT).

³¹ The Commission was not able to fully re-construct the market as no data was obtained for [50-60]% of the market size worldwide, and [60-70]% in the EEA (2018 data). However, even assuming the share of the market that remained unconfirmed as null, Sartorius' combined market share post-acquisition would be [20-30]% worldwide, or [25-35]% in the EEA.

³² The Commission notes, however, that it was not able to fully reconstruct the market as some competitors did not respond to the Commission's request for information. No data was obtained for [30-40]% of the market size attributed to certain competitors of the Parties and Sartorius. However, even assuming the revenue of those not responding as null, the combined market share would be [20-30]% with an increment of [0-5] percentage points, which as such would not raise *prima facie* competition concerns worldwide level.

- (80) With regard to the potential market for **flat sheet TFF systems (SUT)**, according to the 2018 market share data provided by the Parties, the TFF Divestment Business has a worldwide market share of [20-30]% while Sartorius' market share amounts to [20-30]%. In the EEA, the TFF Divestment Business has a market share of [10-20]% and Sartorius of [20-30]% (2018 data provided by the Parties). As mentioned, these estimates by the Parties did not prove to be reliable. According to the Commission's market reconstruction, the Parties particularly overstated Sartorius' 2018 revenues in flat sheet TFF systems SUT. According to the Commission's 2018 market reconstruction, the TFF Divestment Business has a worldwide market share of [40-50]% while Sartorius' market share amounts to [0-5]%. In the EEA, the TFF Divestment Business has a market share of [20-30]% and Sartorius of [0-5]% (2018 data). The Commission considers the increment brought about by Sartorius in 2019 is low.
- (81) Moreover, the Commission repeated the market reconstruction for 2019 as part of the purchaser approval process and found that the combined market share of Sartorius and the TFF Divestment Business in this in the potential market for TFF systems (SUT) would be around [30-40]% with an increment of [5-10]% at worldwide level in 2019.
- (82) The Commission does not consider that the overlap results in *prima facie* competition concerns for the following reasons:
- (83) First, following the acquisition of the TFF Divestment Business, Sartorius would continue to face competition by Danaher [5-10%] and Merck Millipore [10-20%], as well as several smaller companies who confirmed their presence in this field.
- (84) Second, as one of the relevant Sartorius' products was discontinued in 2019, Sartorius' market share would have decreased accordingly going forward.³³
- (85) Third, Danaher's and Sartorius' flat sheet TFF systems (SUT) products are not close competitors.
- (86) As regards the Sartorius' product Flexact, the Commission finds that it is only to a limited extent competing with the products of the TFF Divestment Business. FlexAct is a multi-purpose device that can be used for several applications in the bioprocessing workflow, including also SUT flat sheet tangential filtration. The instrument would in that regard be unique, in that filtration systems generally only perform a single application. This makes it less close to the Parties' offering, and complementary to the products of the TFF Divestment Business. The TFF Divestment Business' products would be more preferable and competitive for customers who wish to acquire a system that only does SUT TFF (notably, it appears that Sartorius' units are generally [more] expensive). The Commission considers that this would be the case for most customers, as the market investigation revealed the importance for customers to be able to use a best technical fit for a bioprocessing product and that this is in turn one of the main drivers for the mix-and-match

³³ In 2018, Sartorius' activities in flat sheet TFF systems (SUT) consisted of its products Sartoflow and Flexact. In 2019, Sartorius discontinued Sartoflow. Sartorius has explained that its decision to discontinue Sartoflow had been taken prior to, and for reasons unrelated to the acquisition of the Divestment Business, (Sartoflow having exhausted its product life cycle).

approach that characterises the bioprocessing industry.³⁴ On this basis, the Commission considers that the Divestment Business is a distant competitor to Sartorius in the potential market for flat sheet TFF systems (SUT).

- (87) In addition, unlike other filtration systems, the FlexAct can only work with Sartorius' consumables. This seems to be a key disadvantage, as customers generally require the freedom to be able to choose the consumables that best accommodate their products. In this regard, the Commission points out that other players have a significantly stronger market position in TFF consumables, suggesting that these are thus higher in demand than those of Sartorius. On this basis, the Commission finds that the competitive constraint exerted by Sartorius in this potential market is significantly smaller than suggested by its market share.
- (88) Fourth, while some market participants noted Sartorius presence in the filtration area, including in flat sheet TFF systems (SUT), the majority of respondents to the Commission's market test considered Sartorius to be a suitable buyer of the Divestment Business.³⁵
- (89) In conclusion, because of the limited combined market shares, increment, and closeness between Sartorius and the Divestment Business' products, the Commission does not consider there to be *prima facie* horizontal competition concerns in the potentially relevant markets for bioprocessing filtration systems.
- (90) There is no vertical relationship between the TFF Divestment business and Sartorius.
- (91) In the market investigation of the main transaction, the Commission has assessed conglomerate effects coming forth from [GE's market position] and the potential link to bioprocessing filtration. Sartorius generally does not hold a strong market position in this area, nor does it have market shares in any other area in bioprocessing that would be indicative of dominance ([Sartorius' market position]). Moreover, the Commission found that customers in the bioprocessing industry generally purchase the different bioprocessing products separately and clearly prioritise quality and the "best technical fit" in their purchasing decisions, which counteracts possible conglomerate foreclosure strategies such as tying and bundling and would thus limit Sartorius' ability to engage in such behaviour. Therefore, the acquisition of the Divestment Businesses would not lead to *prima facie* conglomerate concerns.

2.5.3.6. Conclusion on *prima facie* competition concerns

- (92) The Commission, based on its assessment, considers that Sartorius meets the requirement that no *prima facie* competition concerns arise from its acquisition of the Divestment Businesses. This *prima facie* assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by Sartorius by a competent competition authority under applicable merger control rules.

³⁴ M.9331 Danaher / GE Healthcare Life Sciences Biopharma, paragraphs 500–501.

³⁵ See responses to question F.A.6 of the Commission's market test of 29 November 2019.

- (93) In light of the fact that Sartorius has already received the required approval for the acquisition of the Divestment Business by the Austrian and German national competition authorities, the Commission considers that there is no risk that the implementation of the Commitments will be delayed.

2.6. Assessment of the transaction agreements

- (94) Danaher submitted copies of the Purchase Agreement it entered into with Sartorius on 18 October 2019 and the agreed Schedules thereto, including drafts of related agreements, as well as the amendments to the Purchase Agreement. The Purchase Agreement was amended four times: firstly on 14 December 2019 (to include the 'TFF Systems business' as described in the Schedules of the Commitments), secondly on 19 December 2019, thirdly on the 7 February 2020 (to include the comments of the Chinese State Administration for Market Regulation) and fourthly on 25 February 2020 (in order to bring the Purchase Agreement in line with the Commitments and to add the additional divestments required by the US Federal Trade Commission ('FTC') in the area of flow kits). As mentioned before, Danaher's Fourth Amendment addresses the issues put forward by the Trustee and it brings the Purchase Agreement in line with the Commitments. The Transaction Documents consists of the Purchase Agreement and the four amendments to it, as well as several operational and cost coverage agreements which are Schedules to the Purchase Agreement, in particular the following:

- (a) The Transition Services Agreement ('TSA');
- (b) The Supply and Service Agreement;
- (c) The Intellectual Property License Agreement;
- (d) The Transitional Trademark License Agreement ('TTLA');
- (e) The Bill of Sale, Assignment and Assumption Agreement;
- (f) Share Purchase Agreement: FortéBio;
- (g) Business Transfer Agreement.

- (95) The Purchase Agreement signed between Danaher and Sartorius intends to implement paragraph 2 of the Commitments and to sell five of Danaher's Divestment Businesses described above in paragraph 2.

- (96) The Trustee and the Commission identified several points of deviation from the Commitments, which the Commission requested that Danaher and the Proposed Purchaser address in their Transaction Documents. More specifically, the following changes were requested and implemented in the Fourth amendment to the Purchase Agreement:

- (a) the inclusion of a reference to the contexts and the concerns that the Purchase Agreement addresses, namely: Danaher and Sartorius enter into the Proposed Agreement to resolve any concerns raised by the European Commission, the Federal Trade Commission, the State Administration for Market Regulation and any other antitrust Government Authority;

- (b) the elimination of all restrictions on the assets that would need to transfer with the Divestment Businesses, e.g.: Intellectual Property requirements for the business continuation, any needed assets necessary for the continued viability and competitiveness of the Businesses. In order to address this concern, a clause was included into the Purchase Agreement that would be equivalent to the "catch all" clause present in the Schedules 1-5 of the Commitments in order to ensure that all assets necessary for the continued viability and competitiveness of the Divestment Businesses will be offered to Sartorius;
- (c) the removal of the requirement that the buyer [Danaher's intellectual property rights] that is found to be necessary for the ongoing viability of the business, that is to be transferred after the Closing Date;
- (d) the inclusion of a definition of the "Closing Period" and an amendment of the definition of the term [Danaher's intellectual property agreements] to reflect the provision in Annex 7 of the Commitments;
- (e) the replacement of the standards "commercially reasonable efforts" or "reasonable best efforts" with the standard "best efforts"³⁶. The standard "best efforts" was also applied to the Transitional Services Agreement Section to reflect the spirit of the Commitments. The inclusion of a "best efforts" obligation of Danaher into the Purchase Agreement relating to [Danaher's business strategy] is foreseen in the Schedules 1-5 of the Commitments;
- (f) [...] to reflect the Commitments (section B, paragraph 35). Danaher's non-solicitation obligation with regard to Key Personnel was extended from the initially foreseen [...] years to [...] years, and with regard to any other Transferred Employees for a period of [...] years;
- (g) an amendment of the clause that stated the possibility to waiver the Commission's approval of the buyer in order to close the transaction between Danaher and Sartorius³⁷;
- (h) the elimination of the clause that permitted the Parties to terminate Agreement prior to Closing by mutual written consent. The Commission viewed the unequivocal termination right clause as a risk to the transfer of the Divestment business being ultimately effectuated;
- (i) a supplement to the TTLA (section 5.B) to reflect the final changes made to the Commitments on 10 December 2019 regarding an extension of [Danaher's commitments];
- (j) the reflection of the updated Annex 21 of the Commitments for Chromatography Hardware. The Fourth amendment has amended the list of transferring employees; the Trustee verified that none of those was a key employee and that the changes were implemented.

³⁶ "Best efforts" as required by the Commitments: Schedule 1 paragraph 2 (e); Schedule 2 paragraph 2 (d); Schedule 3 paragraphs 2 (d) (f); Schedule 4 paragraph 2, 3 (c) (d) (f), 4 (b); Schedule 5 paragraph 2, 3 (d) (f); Annex 17 on the Intellectual Property Licence Agreement.

³⁷ The clause that stated: "Section 10.05. Waiver of Closing Conditions. Upon the occurrence of the Closing, any condition set forth in this Article X that was not satisfied as of the Closing shall be deemed to have been waived as of and from the Closing" was deleted.

- (k) an amendment of the TSA to reflect the updated Commitments that allow for the flow kit consumables to continue being supplied by Danaher to [Danaher's commitments].
 - (l) a reduction of the duration of the confidentiality clause for the potentially transferring sales associates of Sales Incentive Agreements to [...] instead of the previous unlimited duration. The Trustee considered that the open-ended confidentiality restriction in relation to the other Pall products that the personnel have had contact with outside the scope of the business that is transferring it was rather strict as the perpetual nature of the risk attributed to the signatory by way of potential breach is not usual in an M&A context. Moreover, the adherence of the transferring personnel to Danaher's confidentiality and non-compete restrictions is directly related to the incentive package to be obtained.
 - (m) the inclusion of a clause that states, subject to Sartorius' reasonable written request [...] in order to bring the Purchase Agreement in line with paragraph 2 (f) of each of the Schedules 2-3 and paragraph 3 (f) of each of the Schedules 4-5 of the Commitments.
- (97) The Trustee analysed the updated TSA costs and supporting documentation provided by Danaher and considers that the explanations provided by Danaher on the calculation of the updated TSA fees appear to be reasonable and in accordance with paragraph 9, 15, 20, 24 and 29 of the Commitments (and the corresponding Annexes 3 and 23).
- (98) Based upon its review of the Transaction Agreements, and the explanations provided by Sartorius, Danaher, the Hold Separate Managers to the Divestment Businesses and their external counsel, the Trustee considers that the Purchase Agreement, as amended by the Fourth Amendment complies with the requirements of the Commitments and that the Divestment Businesses are being sold in a manner that is consistent with the Commitments.
- (99) The Commission, after assessing the information in the file and having regard to the submissions from the Trustee, considers that the Transaction Documents, as amended, are in line with the Commitments.

3. CONCLUSION

- (100) On the basis of the above assessment, the Commission approves Sartorius as a suitable purchaser of the Divestment Business.
- (101) On the basis of the above assessment, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.

- (102) This decision only constitutes approval of the Proposed Purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that Danaher has complied with the Commitments.
- (103) This decision is adopted in application of paragraph 38 of the Commitments attached to the Commission Decision of 18 December 2019.

For the Commission

(Signed)
Olivier GUERSENT
Director-General