EUROPEAN COMMISSION
DG Competition

Case M.10749 - PAI PARTNERS / THE CARLYLE GROUP / THERAMEX

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 12/07/2022

In electronic form on the EUR-Lex website under document number 32022M10749

EUROPEAN COMMISSION

Brussels, 12.07.2022
C(5058) 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PAI Partners S.à.r.l.
232 Rue de Rivoli
75001 Paris
France

The Carlyle Group, Inc.
1 St. James's Market
SW1Y 4AH London
United Kingdom

Subject: **Case M.10749 – PAI PARTNERS / THE CARLYLE GROUP / THERAMEX**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 20 June 2022, the Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which PAI Partners SAS ("PAI Partners", France) and The Carlyle Group, Inc. ("Carlyle",

[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').

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Tel: +32 229-91111. Fax: +32 229-64301. E-mail: COMP-MERGER-REGISTRY@ec.europa.eu.

US) will acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the whole of Theramex Healthcare Topco Limited ("Theramex", UK or the "Target") (the "Transaction"), by way of purchase of shares.[3] PAI Partners and Carlyle are hereinafter referred to as the "Notifying Parties", and together with Theramex as the "Parties".

1. THE PARTIES

(2) PAI Partners is a private equity firm headquartered in Paris, France. One of its portfolio companies is Ethypharm S.A.S. ("Ethypharm"), a speciality pharmaceutical company that manufactures products for targeted central nervous system indications, notably severe pain and opioid dependency, as well as a range of injectable medicines for critical care situations.

(3) Carlyle is a global asset management firm headquartered in Washington DC, USA. One of its portfolio companies is Curia Global, Inc.[4] ("Curia"), a contract research and manufacturing organisation that provides drug discovery, development, cGMP[5] manufacturing and aseptic fill and finish to the pharmaceutical and biotechnology industries.

(4) Theramex is a global specialty pharmaceutical company headquartered in London, United Kingdom. It is active in women's health and focusses on contraception, fertility, menopause and osteoporosis. The company markets a broad range of branded and branded generic products globally. Theramex is active in 25 EU Member States.

2. THE TRANSACTION AND THE CONCENTRATION

(5) Theramex is currently solely controlled by CVC Capital Partners, a private equity company headquartered in Luxembourg. Pursuant to a Share Purchase Agreement, entered into on 25 March 2022 between the sellers[6] and special purpose vehicles indirectly owned by PAI Partners and Carlyle (namely Stars UK Bidco Limited, indirectly owned by Stars Jersey Equityco Limited ("Stars Equityco")), PAI Partners and Carlyle will indirectly acquire the entire issued share capital of the Target. PAI Partners any Carlyle will each indirectly own […]% of the shares of Stars Equityco through funds managed by each of them respectively.

(6) Pursuant to a Memorandum of Understanding, entered into on 8 March 2022, PAI Partners and Carlyle will share equally the voting rights in Stars Equityco. Moreover, PAI Partners and Carlyle will need to both agree on matters indicative of control, namely the business plan and the appointment of senior management. Consequently, post-Transaction PAI Partners and Carlyle will acquire joint control over Stars Equityco and ultimately the Target.

---

3 Publication in the Official Journal of the European Union No C 243, 27.6.2022, p. 59.

4 Until 2021 Albany Molecular Research Inc.

5 Current Good Manufacturing Practice as defined by the U.S. Food and Drug Administration ("FDA").

6 Sellers include CVC and the shareholders involved in the managements of the Target.

(7) The Transaction therefore constitutes a concentration under Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (PAI Partners: EUR […] million; Carlyle: EUR […] million; Target […] million)[7]. Two of them have a Union-wide turnover in excess of EUR 250 million (PAI Partners: EUR […] million; Carlyle: EUR […] million; Target […] million), but none of the undertakings concerned achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

4. RELEVANT MARKETS

(9) The Transaction gives rise to affected markets in relation to the manufacturing of finished dose pharmaceuticals ("FDPs")[8] and the provision of contract development and manufacturing organization ("CDMO") services.

4.1. Finished dose pharmaceuticals ("FDPs")

4.1.1. Product market definition

4.1.1.1. General approach to market definition for FDPs

(10) To define relevant product markets regarding FDPs, the Commission typically takes into account the Anatomical Therapeutic Classification ("ATC") of the European Pharmaceutical Marketing Research Association. In the context of this classification, at the ATC3 level,[9] FDPs are grouped by therapeutic indications. The Commission uses ATC3 as the starting point for relevant product market definition, since all products in the same ATC3 class generally have the same therapeutic indication and cannot be substituted by products from other ATC3 classes.[10] However, the Commission also recognised[11] that it may be appropriate to carry out analyses at the narrower classification level ATC4,[12] or possibly at the level of molecule. ATC classification covers prescription-bound (Rx) and OTC[13]-sold drugs. Specifically for OTC-sold drugs, IQVIA[14] also provides market data pursuant to a specific classification for OTC products.[15] With respect to OTC-sold

---

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

8 FDPs are pharmaceutical products that have undergone all stages of production, including packaging in the final container and labelling.

9 ATC3 level classification is narrower than ATC1 and ATC2 level classifications. At ATC1, drugs are divided into 16 anatomical main groups. At ATC2, drugs are divided at pharmacological or therapeutic groups.

10 See recently Case M.10247 – *CVC/Cooper*, para. 7.

11 See recently Case M.10247 – *CVC/Cooper*, para. 7.

12 ATC4 level classification is typically based on mode of action or mode of administration of the drugs.

13 Over-the-counter.

14 IQVIA is an American multinational company serving the combined industries of health information technology and clinical research, formerly Quintiles and IMS Health, Inc.

15 That is because in relation to OTC products, 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).

drugs, the Commission typically uses OTC3 level[16] as a starting point for relevant product market definition but narrower delineations are also considered (e.g., at OTC4 level or by molecule).[17]

(11) The Notifying Party does not contest the Commission's general approach to the product market definition for FDPs.

4.1.1.2. Bone calcium regulators - Bisphosphonates for osteoporosis and related disorders (ATC4 level M5B3)

(12) The ATC3 level M5B concerns bone calcium regulators, which are predominantly used to treat osteoporosis.[18] The ATC3 M5B class is further divided into three ATC4 classes depending on the intended use of the products: products indicated and used mainly for osteoporosis and Paget's disease (M5B3), products indicated and used mainly for tumour-related calcium disorders (M5B4) and other specific products, which are used for osteoporosis (M5B9). In previous decisions, the Commission has considered ATC3 class M5B and considered segmentation based on the standard criteria (i.e. segmentation at ATC3 level, ATC4 class or molecule) and a possible market containing all biosphosphonates (a combination of ATC4 classes M5B3 and M4B4).[19] While the Commission took the view that it would be inappropriate to define the relevant market at the molecule level, it finally left the exact product market definition open.[20]

(13) While the Notifying Parties consider that the Target's and Ethypharm's products belonging to ATC4 class M5B3 are not substitutable and belong to distinct product markets, it submits that the exact product market definition can in any case be left open since the Transaction does not raise competition concerns under any plausible market definition.[21]

4.1.1.3. Conclusion

(14) For the purposes of the present Decision, it is not necessary to depart from the Commission's previous decisional practice with respect to the product market definition for FDPs concerning the FDP categories in which the Parties overlap.

(15) Specifically, the exact product market definition for bone calcium regulators can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement even under the narrowest plausible market defined at the ATC4 class M5B3.[22]

---

16 See e.g. Case COMP/M.9274 – *Glaxosmithkline/Pfizer Consumer Healthcare Business*, para. 17 and Case COMP/M.8889 – *Teva/PGT OTC Assets*, para. 21.

17 See e.g. Case COMP/M.8889 – *Teva/PGT OTC Assets*, para. 21.

18 Osteoporosis is a skeletal disorder characterised by low bone mass and deterioration of bone tissue, with a consequent increase in bone fragility and susceptibility to fracture.

19 See cases M.8675 – *CVC/Teva's Women's Health Business*, para. 26; M.6613 – *Watson/Actavis*, para. 27; M.5253 – *Sanofi-Aventis/Zentiva*, paras 138 – 145; M.5555 – *Novartis/Ebewe*, paras. 37 – 42.

20 Ibid.

21 Form CO, para. 147.

22 Note that the Parties' activities in ATC4 class M5B3 do not overlap at the narrower plausible market defined at the level of individual molecules.

4.1.2. Geographic market definition

(16) For FDPs, the Commission consistently defines relevant markets at national level.[23] The Notifying Parties do not contest such an approach.[24]

(17) The Commission's investigation did not provide any indications that would require the Commission to depart from its previous decisional practice on the geographic scope of the different plausible markets for FDPs.

(18) Therefore, for the purposes of this decision, the Commission considers the geographic scope of the different plausible markets for FDPs to be national in scope.

4.2. CDMO services to pharmaceutical companies

4.2.1. Product market definition

(19) Contract development and manufacturing organisations ("CDMOs") provide manufacturing services for FDPs and active pharmaceutical ingredients ("API"s) to third-party pharmaceutical companies.

(20) In the past, the Commission distinguished (i) a CDMO market for FDPs and (ii) a CDMO market for APIs.[25] As regards the CDMO market for FDPs, further segmentation was considered based on (i) the pharmaceutical form manufactured (e.g., solids, semi-solids, injectables); (ii) the conditions of manufacture (e.g., toxicity, sterile environment); (iii) the type of API used for its production and the delivery mechanism used (e.g., swallowing, intravenous, injection, etc.).[26] The Commission also examined whether there is a separate market for contract manufacturing organization ("CMO") services but eventually left the question open.[27]

(21) The Notifying Parties do not contest the Commission's previous approach, and submit that in any case the exact product market definition be left open since the Transaction does not raise competition concerns under any plausible market definition.[28]

(22) The Commission's investigation did not provide any indications that it would be appropriate for the Commission to depart from its previous decisional practice for CDMOs.

(23) In this case, the exact product market definition for CDMOs can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible market definition.

---

23 See recently Case M.10247 – *CVC/Cooper*, para. 41.
24 Form CO, para. 160.
25 See recently Case M.10247, *CVC/Cooper*, para. 150.
26 See recently Case M.10247, *CVC/Cooper*, para. 150.
27 See recently Case M.10247, *CVC/Cooper*, para. 150.
28 Form CO, para. 158.

4.2.2. Geographic market definition

(24) The Commission has previously considered the geographic scope of all plausible CDMO services markets as at least EEA-wide.[29] The Notifying Parties do not contest such an approach.[30]

(25) The Commission's investigation did not provide any indications that it would be appropriate for the Commission to depart from its previous decisional practice.

(26) In this case, the exact geographic market definition for CDMOs can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible geographic market definition for CDMOs.

5. COMPETITIVE ASSESSMENT

(27) On the basis of the above market definitions, and the Parties' activities, the Transaction results in the following affected markets:

(a) Both the Target and PAI Partners (via Ethypharm) are active in various national markets for FDPs. The Transaction gives rise to a horizontally affected market with respect to FDPs in ATC4 class M5B3 (bisphosphonates for osteoporosis and related disorders) in Spain and in France.

(b) Carlyle (via Curia) is active as a CDMO for FDPs, which could be considered as upstream of various markets for FDPs in which the Target is active. The Transaction gives rise to affected markets regarding the vertical link between the provision of CDMO services in the EEA (and its plausible segments) (upstream) and a number of plausible national FDP markets (downstream). The vertically affected relationships are outlined in more detail in Section 5.3 and Appendix 1 below.

5.1. Analytical Framework

(28) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.

(29) A merger giving rise to a significant impediment of effective competition may do so as a result of the creation or strengthening of a dominant position in the relevant market(s). Moreover, mergers in oligopolistic markets involving the elimination of the important competitive constraints that the parties previously exerted on each other, together with a reduction of competitive pressure on the remaining competitors, may also result in a significant impediment to effective competition, even in the absence of dominance.

---

29 See recently Case M.10247, *CVC/Cooper*, para. 154.

30 Form CO, para. 163.

(30) The Commission Guidelines on the assessment of horizontal mergers under the Merger Regulation (the "Horizontal Merger Guidelines")[31] describe horizontal non-coordinated effects as follows: "*A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.*"[32]

(31) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force.[33] That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present for significant non-coordinated effects to be likely. The list of factors, each of which is not necessarily decisive in its own right, is also not an exhaustive list.[34]

(32) Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, the entry of new competitors on the market, and efficiencies.

(33) A concentration can also entail vertical and/or conglomerate effects. The Commission Guidelines on the assessment of non-horizontal mergers under the Merger Regulation[35] (the "Non-Horizontal Merger Guidelines") distinguish between two main ways in which non-horizontal mergers may significantly impede effective competition: (a) when they give rise to input and/or customer foreclosure (non-coordinated effects); and (b) when the merger changes the nature of competition in such a way that firms that previously were not coordinating their behaviour, are now more likely to coordinate to raise prices or otherwise harm effective competition (coordinated effects).[36] The Non-Horizontal Merger Guidelines distinguish two types of foreclosure: (a) where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input

---

31 OJ C 31, 5.2.2004, p. 5.

32 Horizontal Merger Guidelines, paragraph 24.

33 Horizontal Merger Guidelines, paragraphs 27 and following.

34 Horizontal Merger Guidelines, paragraphs 24-38.

35 Commission Guidelines on the assessment of non-horizontal mergers under the Merger Regulation (OJ C 265, 18.10.2008, p. 6).

36 Non-horizontal Merger Guidelines, paragraphs 17-19.

(input foreclosure) and (b) where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base (customer foreclosure)[37].

(34) In assessing the likelihood of an anticompetitive input foreclosure strategy, the Commission has to examine whether: (i) the merged entity would have the ability to substantially foreclose access to inputs; (ii) it would have the incentive to do so; and (iii) a foreclosure strategy would have a significant detrimental effect on competition downstream.[38] In assessing the likelihood of an anticompetitive customer foreclosure strategy, the Commission has to examine whether: (i) the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from upstream rivals; (ii) it would have the incentive to do so; and (iii) a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[39] According to the Non-Horizontal Merger Guidelines, the Commission is unlikely to find concern in non-horizontal mergers, where the market share post-merger of the new entity in each of the markets concerned is below 30%.[40]

5.2. ATC4 class M5B3 (Bisphosphonates for osteoporosis and related disorders)

(35) The Parties' activities gives rise to horizontally affected markets in plausible FDP markets in ATC4 class M5B3 (including bisphosphonates for osteoporosis and related disorders) in Spain and in France. The Parties' and the competitors' market shares in these plausible markets are presented in Table 1 below.

Table 1 - Market shares (in value)[41] in ATC4 class M5B3 in Spain and in France in 2021[42]

Spain			***France***		
Competitor	**Sales (thousand EUR)**	**Market shares**	**Competitor**	**Sales (thousand EUR)**	**Market shares**
Theramex	[…]	[20-30]%	Theramex	[…]	[20-30]%
Ethypharm	[…]	[0-5]%	Ethypharm	[…]	[0-5]%
Combined	***[...]***	***[30-40]%***	***Combined***	***[...]***	***[20-30]%***
Organon	[…]	[20-30]%	Novartis	[…]	[20-30]
Infarco	[…]	[5-10]%	Viatris	[…]	[10-20]%
Normon	[…]	[5-10]%	Servier	[…]	[10-20]%
Stada	[…]	[5-10]%	Aurobindo	[…]	[5-10]%
Total[43]	*[...]*	*100%*	*Total*	*[...]*	*100%*

Source: Form CO, updated Annex 14.

37 Non-horizontal Merger Guidelines, paragraph 30.

38 Non-horizontal Merger Guidelines, paragraph 32.

39 Non-horizontal Merger Guidelines, paragraph 59.

40 Non-horizontal Merger Guidelines, paragraph 25.

41 On the basis of volume market shares, no additional affected markets would arise and the combined Parties' share in ATC4 class M5B3 in Spain and France would be lower than the value shares.

42 In Spain, in 2020 the Parties' value market shares were as follows: Theramex: [20-30]% and Ethypharm [0-5]%, and in 2019 as follows: Theramex: [20-30]% and Ethypharm:[0-5]%. In France, in 2020 the Parties' value market shares were as follows: Theramex: [10-20]% and Ethypharm [0-5]%, and in 2019 as follows: Theramex: [10-20]% and Ethypharm: [0-5]%.

43 Sales and market shares not attributed to competitors listed in the table can be attributed to smaller competitors.

(36) The proposed Transaction is unlikely to give rise to competitive concerns because the Transaction will not cause significant change in the competitive landscape of these markets:

(a) The increments brought by Ethypharm are very small at around [0-5]%, with a HHI delta of between [below 250] in Spain and [below 250] in France. This falls below the HHI thresholds set out in the Horizontal Merger Guidelines, which may serve as an initial indicator of the absence of competition concerns and in which cases the Commission is unlikely to identify horizontal competition concerns.[44]

(b) Furthermore, the combined market shares of the Target and Ethypharm remain moderate and below 35%.[45]

(c) A number of credible competitors, which all have a significantly stronger market position than Ethypharm, as detailed in Table 1 above, remain present in the market and will continue to exert competitive constraint on the Parties post-Transaction.

(d) In addition, the Theramex's and Ehtypharm's products do not appear to be close competitors.* The Target markets Actonel, Actonel GR, Actonel Combi and Actonel GR Combi, which are tablets against osteoporosis that must be administered at regular and relatively close intervals (e.g. daily, weekly or monthly according to their dosage). Ethypharm markets two Zoledronic acid infusion bags (4 mg and 5 mg) indicated for the treatment of osteoporosis. These are solutions for intravenous injections and must be administered by a health professional and at relatively longer intervals (e.g. every 3/4 weeks, 2 months, yearly or even only once). The Parties' products are therefore differentiated in terms of dosages, pharmaceutical forms and routes of administration.

(37) In light of the foregoing, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement in terms of its competition impact in the plausible market for FDPs ATC4 class M5B3 (bisphosphonates for osteoporosis and related disorders) in Spain and in France.

5.3. CDMO Services – Curia (Upstream) / FDPs – Target (Downstream)

(38) Curia, Carlyle's portfolio company, is active in the upstream markets for CDMO services in the EEA, but its market share does not exceed 30% under any plausible market definition. These CDMO services can theoretically be an input for several FDPs of the Target (downstream). For some of these FDPs the Target has a share

---

44 Based on the Horizontal Merger Guidelines (paragraph 20), the Commission is unlikely to identify horizontal competition concerns in a merger concerning relevant markets with a post-merger HHI between 1 000 and 2 000 (in this case [1000-2000] in Spain and [1000-2000] in France) and an HHI delta below 250 (subject to certain caveat factors). In this market, none of these caveat factors applies.

45 In pharmaceutical mergers with a large number of affected markets, the Commission typically applies a system of filters aimed at determining the group of markets where concerns are most likely and on which it focuses its analysis (see e.g. case M.10247 – *CVC/Cooper*, para. 9). According to this system, the discussed horizontal overlap would fall in "Group 3" overlaps (Parties' combined share is between 20 and 35%), which are typically not discussed individually in Commission's decisions.

* Should read: In addition, Theramex's and Ehtypharm's products do not appear to be close competitors.

above 30% at national level.[46] The vertically linked downstream markets in which the Target's market share (under all plausible market definitions) at national level exceeds 30% are identified in Appendix 1.

(39) The combined entity is unlikely to have the ability to engage in input foreclosure for the following reasons:

(a) It would not have market power in any of the upstream markets for CDMO services in the EEA or at global level, where it is active. Under all plausible market definitions, Curia holds a share of 5% or less in the upstream markets for CDMO services in the EEA and globally.[47]

(b) Curia will continue facing competition from several players in the EEA and globally, including Thermo Fisher (through its subsidiary Patheon), Lonza, Recipharm, Catalent and Fareva.[48] Post-Transaction, the Target's downstream rivals could turn to any of Curia's rivals to source CDMO services, even if the combined entity decided to discontinue supply of its upstream inputs.

(c) Curia does not have any supply relationship with the Target, and according to the Notifying Parties does not have the technical ability to supply the Target. The Parties provide that most of the Target's products are film coated tablets, creams, gels, or patches, which Curia does not produce. The Parties further provide that products marketed by the Target are steroid- and hormone-based, which would require manufacturing facilities Curia does not have, and that it would require significant investment to build such facilities.

(40) The combined entity is unlikely to have the ability to engage in customer foreclosure for the following reasons:

(a) The Target would not constitute an important customer for CDMO services in the EEA. That is because the customer base for CDMO services is comprised of virtually all manufacturers of FDPs in the EEA, of which the Target, as a speciality pharmaceutical company focused on women health only, presents only a small proportion. Specifically, the Target's demand for any CDMO service in the upstream markets does not exceed [0-5]% of the total EEA-wide demand,[49] and the Target's total CDMO demand does not change regardless of the exact product market definition of downstream markets. In case the combined entity decided post-Transaction to source the CDMO services that Curia offers today only in-house, Curia's rivals (both in the EEA or wider) would continue to have access to a significant customer base to sell their products.

(b) In addition, as explained in paragraph (39) above, Curia does not have any supply relationship with the Target, and according to the Notifying Parties does not have the technical ability to supply the Target.

---

46 Following the Commission's previous practice with respect to product market definition for FDPs, these vertically linked plausible markets include all national markets where the Target's market share exceeds 30% under ATC3, ATC4 and/or molecule levels (e.g. if for a certain FDP the Target's market share exceeds 30% both under ATC3 and under ATC4, both these levels are considered as plausible markets).

47 Form CO, Table 7 and response to RFI 4, question 3.

48 Form CO, paragraph 232.

49 Form CO, paragraph 251.

(41) Given that the combined entity would not have the ability to foreclose its downstream rivals in the national markets for FDPs, or its upstream rivals in CDMO services in the EEA (or wider), it would also not have an incentive to attempt a foreclosure as it would not be able to gain anything from such a strategy. In the absence of the ability to foreclose, any foreclosure strategy by the combined entity would have no impact on the national markets for FDPs and the market for CDMO services in the EEA (or wider).

(42) In light of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement as a result of either input or customer foreclosure on the markets for CDMO services in the EEA (and it plausible segments) (upstream) and relevant national markets for FDPs (as overviewed in Appendix 1 below).

6. CONCLUSION

(43) For the above reasons, the 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
Executive Vice-President

APPENDIX 1

National FDP markets where the Target's market shares exceed 30 % in 2021.

Geographic market	Product market	Share (2021)
Romania	ATC3 - A11C VITAMIN A AND D, INCLUDING COMBINATIONS OF THE TWO	[80-90]%
Slovakia	ATC3 - A11C VITAMIN A AND D, INCLUDING COMBINATIONS OF THE TWO	[60-70]%
France	ATC3 - G2F TOPICAL SEX HORMONES	[30-40]%
Spain	ATC3 - G2F TOPICAL SEX HORMONES	[30-40]%
Estonia	ATC3 - G3G GONADOTROPHINS, INCLUDING OVULATION STIMULANTS	[60-70]%
Croatia	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[90-100]%
Estonia	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[90-100]%
Finland	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[90-100]%
Latvia	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[90-100]%
Lithuania	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[90-100]%
Portugal	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[90-100]%
Romania	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[90-100]%
Spain	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[90-100]%
Sweden	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[90-100]%
France	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[90-100]%
Czech Republic	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[90-100]%
Italy	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[90-100]%
Belgium	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[90-100]%
Luxembourg	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[90-100]%
Germany	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[90-100]%
Austria	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[80-90]%
Romania	ATC4 - A11C2 VITAMIN D PLAIN	[80-90]%
Estonia	ATC4 - G3G0 GONADOTROPHINS	[60-70]%
Slovakia	ATC4 - A11C2 VITAMIN D PLAIN	[60-70]%
Slovakia	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[40-50]%
Poland	ATC4 - G3A2 MONOPHAS PREP>=50MCG OES	[40-50]%
Spain	ATC4 - G2F0 TOPICAL SEX HORMONES	[30-40]%
France	ATC4 - G2F0 TOPICAL SEX HORMONES	[30-40]%
Bulgaria	Molecule - ALFACALCIDOL	[90-100]%
Croatia	Molecule - ALFACALCIDOL	[90-100]%
Hungary	Molecule - ALFACALCIDOL	[90-100]%
Slovenia	Molecule - ALFACALCIDOL	[90-100]%
Romania	Molecule - ALFACALCIDOL	[90-100]%
Slovakia	Molecule - ALFACALCIDOL	[70-80]%
Czech Republic	Molecule - ALFACALCIDOL	[40-50]%
Latvia	Molecule - ALFACALCIDOL	[30-40]%
Netherlands	Molecule - ALFACALCIDOL	[30-40]%
Lithuania	Molecule - ALFACALCIDOL	[30-40]%
Belgium	Molecule - CALCIUM CARBONATE	[40-50]%
France	Molecule - CALCIUM CARBONATE	[90-100]%
Netherlands	Molecule - CALCIUM CARBONATE	[90-100]%
France	Molecule - COLECALCIFEROL	[30-40]%
Belgium	Molecule - RISEDRONATE SODIUM/CHOLECALCIFEROL	[90-100]%
Croatia	Molecule - RISEDRONATE SODIUM/CHOLECALCIFEROL	[90-100]%
France	Molecule - RISEDRONATE SODIUM/CHOLECALCIFEROL	[90-100]%
Lithuania	Molecule - RISEDRONATE SODIUM/CHOLECALCIFEROL	[90-100]%
Luxembourg	Molecule - RISEDRONATE SODIUM/CHOLECALCIFEROL	[90-100]%
France	Molecule - ESTRADIOL LEVONORGESTREL	[90-100]%

Geographic market	Product market	Share (2021)
Italy	Molecule - ESTRADIOL LEVONORGESTREL	[90-100]%
Portugal	Molecule - ESTRADIOL LEVONORGESTREL	[90-100]%
Latvia	Molecule - ESTRADIOL LEVONORGESTREL	[90-100]%
Austria	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Belgium	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Croatia	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Czech Republic	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Estonia	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Finland	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
France	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Germany	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Hungary	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Italy	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Latvia	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Lithuania	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Luxembourg	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Netherlands	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Poland	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Portugal	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Romania	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Slovakia	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Spain	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Sweden	Molecule - ESTRADIOL NOMEGESTROL ACETATE	[90-100]%
Poland	Molecule - ESTRADIOL NORETHISTERONE	[50-60]%
Finland	Molecule - ESTRADIOL NORETHISTERONE	[40-50]%
Italy	Molecule - ESTRADIOL PROGESTERONE	[90-100]%
Poland	Molecule - ESTRADIOL PROGESTERONE	[90-100]%
Spain	Molecule - ESTRADIOL PROGESTERONE	[90-100]%
France	Molecule - ETHINYLESTRADIOL LEVONORGESTREL	[30-40]%
Latvia	Molecule - FLURBIPROFEN	[90-100]%
France	Molecule - FLURBIPROFEN	[80-90]%
Estonia	Molecule - FOLLITROPIN ALFA	[80-90]%
Hungary	Molecule - FOLLITROPIN ALFA	[50-60]%
Poland	Molecule - NOMEGESTROL ACETATE	[90-100]%
Portugal	Molecule - NOMEGESTROL ACETATE	[90-100]%
Italy	Molecule - NOMEGESTROL ACETATE	[80-90]%
Luxembourg	Molecule - NOMEGESTROL ACETATE	[80-90]%
Belgium	Molecule - NOMEGESTROL ACETATE	[60-70]%
Belgium	Molecule - PRASTERONE	[90-100]%
France	Molecule - PRASTERONE	[90-100]%
Germany	Molecule - PRASTERONE	[90-100]%
Italy	Molecule - PRASTERONE	[90-100]%
Poland	Molecule - PRASTERONE	[90-100]%
France	Molecule - PROMESTRIENE	[90-100]%
Italy	Molecule - PROMESTRIENE	[90-100]%
Latvia	Molecule - PROMESTRIENE	[90-100]%
Portugal	Molecule - PROMESTRIENE	[90-100]%
Spain	Molecule - PROMESTRIENE	[90-100]%
Luxembourg	Molecule - RISEDRONAT SODIUM	[90-100]%
Romania	Molecule - RISEDRONAT SODIUM	[90-100]%
Austria	Molecule - RISEDRONAT SODIUM	[90-100]%
Spain	Molecule - RISEDRONAT SODIUM	[70-80]%
Belgium	Molecule - RISEDRONAT SODIUM	[40-50]%
France	Molecule - RISEDRONAT SODIUM	[40-50]%

Geographic market	Product market	Share (2021)
Portugal	Molecule - RISEDRONAT SODIUM	[40-50]%
Italy	Molecule - RISEDRONAT SODIUM	[30-40]%
France	Molecule - SERTACONAZOLE	[90-100]%

Source: Form CO, Annex 15; Response to RFI4, Annex A.2.