



DETERMINATION OF MERGER NOTIFICATION M/13/017 -

RP Management/Elan

Section 21 of the Competition Act 2002

Proposed acquisition by Echo Pharma Acquisition Limited of Elan Corporation, plc.

Dated 13 June 2013

Introduction

1. On 15 May 2013, in accordance with section 18(1)(a) of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed acquisition whereby RP Management, LLC ("RP Management") through Echo Pharma Acquisition Limited ("Echo Pharma") would acquire sole control of Elan Corporation, plc ("Elan").
2. The notification was filed by Echo Pharma. Since the proposed acquisition involves a public bid that has not been accepted, there is at this stage only one undertaking involved.¹

The Undertaking Involved

3. RP Management, a limited liability company with its headquarters in New York, acts as investment manager to entities investing in royalty interests in marketed and late state biopharmaceutical products, with a portfolio of royalty interests in 38 marketed and approved products and two products pending approval.² A single individual, Pablo Legorreta, manages and controls RP Management and another entity, [...] ("Entity A").
4. RP Management is a global leader in the acquisition of royalty interests in pharmaceutical and biotechnology products. It provides liquidity in the form of upfront lump sum payments to royalty owners in exchange for rights to collect streams of future royalty payments. RP Management is not involved in the discovery, development, manufacturing or marketing of any of these products.
5. In the financial period ending 31 December 2012, RP Management's worldwide turnover was approximately €[...]. It has not acquired any royalty interest from any licensor/seller based in the State. As a result of a purchase from a licensor/seller not based in the State, RP Management currently receives pharmaceutical royalty revenue from

¹ See Authority, Merger Notification Form page 2, available at http://www.tca.ie/images/uploaded/documents/Merger_Notification_Form.pdf.

² See <http://www.royaltypharma.com/> (referring to RP Management as "Royalty Pharma" – a term that will be used interchangeably with "RP Management" in this Determination). RP Management's portfolio of royalty interests includes Abbott's Humira; Johnson and Johnson's Remicade; Merck's Januvia; Gilead's Atripla, Truvada, and Emtriva; Pfizer's Lyrica; Amgen's Neupogen and Neulasta; and Genentech's Rituxan.

one licensee which is based in the State. For the year ending 31 December 2012 its turnover in the State was approximately €[...].

6. [Entity A] manages a group of [...] investment funds³ that invest in "[...]." In 2012 [Entity A] had aggregate worldwide turnover of approximately €[...] and no turnover in the State. In December 2012, one of [Entity A's] investment funds issued debt funding to [...] in exchange for a share of that company's [...] – a kind of "synthetic royalty". [...].
7. Echo Pharma is an acquisition vehicle managed and controlled by RP Management which was incorporated for the purposes of this transaction.

The Target

8. Elan is a public limited company with its headquarters in Ireland whose shares trade on the New York and Irish Stock Exchanges. Elan has been primarily engaged in the research and development of pharmaceutical drugs.
9. Until recently Elan's principal revenue producing asset was Tysabri, a drug used for the treatment of multiple sclerosis and Crohn's disease. On 6 February 2013 Elan announced that it would transfer all of its interest in the intellectual property and other assets related to the development, manufacturing and commercialisation of Tysabri to Biogen Idec ("Biogen") in exchange for, among other things, a cash payment of \$3.25 billion and royalties on future global net sales of Tysabri made by Biogen.⁴ The transaction closed on 2 April 2013.⁵
10. Following the transaction with Biogen, Elan engaged in a \$1 billion share buyback.⁶ Elan further announced an *"irrevocable Notice of Redemption"* to redeem \$600 million in outstanding 6.25% Senior Notes due 2019⁷ and initiated a *"unique cash dividend policy"* calculated as a percentage of the Tysabri royalty paid by Biogen to Elan, and initially set at 20%.⁸
11. Elan does not currently support any marketed products but it does have a 49.9% equity interest in JANSSEN Alzheimer Immunotherapy, which is conducting research and development on drugs for the treatment of Alzheimer's disease.
12. For the financial year ending 31 December 2012 Elan's worldwide turnover was approximately €557.4 million, of which €557.2 million

³ [...].

⁴ Prior to this and since August 2000 Elan had a collaboration agreement whereby Biogen was responsible for manufacturing and marketing of Tysabri. Elan purchased Tysabri from Biogen and was responsible for its distribution in the United States only while Biogen was responsible for its distribution elsewhere. See <http://ir.elan.com/phoenix.zhtml?c=88326&p=irol-newsArticle&ID=1781907&highlight=>.

⁵ See <http://ir.elan.com/phoenix.zhtml?c=88326&p=irol-newsArticle&ID=1802637&highlight=>.

⁶ See <http://newsroom.elan.com/phoenix.zhtml?c=88326&p=irol-newsArticle&ID=1787913&highlight=>.

⁷ See <http://newsroom.elan.com/phoenix.zhtml?c=88326&p=irol-newsArticle&ID=1802646&highlight=>.

⁸ See <http://newsroom.elan.com/phoenix.zhtml?c=88326&p=irol-newsArticle&ID=1791609&highlight=>.

was from discontinued operations.⁹ Its reported turnover in the State for the same period was nil.¹⁰

The Transaction

13. On 25 February 2013, following communication with Elan on 18 February, RP Management announced a possible offer.¹¹ On 15 April 2013 RP Management formally announced the offer and the offer document was posted on 2 May 2013.¹² On 15 May 2013 the board of directors of Elan recommended that its shareholders reject the offer.¹³ RP management then revised its offer on 20 May 2013,¹⁴ and on 3 June 2013 the Elan board of directors again rejected it.¹⁵ RP Management increased its offer on 7 June 2013¹⁶ and on 10 June 2013 the Elan board again rejected it.¹⁷

Rationale for the Acquisition

14. The Purchaser states that the acquisition:

"represents a strategic investment opportunity for Royalty Pharma to invest in further royalty income streams consistent with its existing business strategy and, in particular, the royalty payable to Elan further to the Tysabri Transaction."

Third Party Submissions

15. Third party submissions were received by the Authority from two parties. The submissions were received after the published deadline for third party submissions of 26 May 2013.
16. The views of both parties are similar and can be summarised as follows:
- There is a distinct global product market for investments in pharmaceutical royalty interests.
 - There are a limited number of participants in this market and especially in the high end, i.e., investments in excess of \$250-\$300 million.

⁹ See Elan Annual Report page 102, available at <http://ir.elan.com/phoenix.zhtml?c=88326&p=irol-reportsannual>. The turnover figures are calculated using the ECB average exchange rate for 2012 of €1 = US\$1.2848

¹⁰ See Elan Annual Report page 108.

¹¹ See http://www.royaltypharma.com/PressReleases/Rule_2.4_Announcement.pdf.

¹² See

http://www.royaltypharma.com/PressReleases/Royalty_Pharma_Firm_Offer_for_Elan_PressRelease-April15_2013.pdf.

¹³ See http://www.elan.com/images/FINAL%20DEFENCE%20DOCUMENT_tcm10-28949.pdf.

¹⁴ See

http://www.royaltypharma.com/PressReleases/Royalty_Pharma_Revised_Offer_For_Elan_May20_US_Press_Release.pdf.

¹⁵ See

http://www.elan.com/images/Elan%20Response%20Document%20in%20Respect%20of%20Royalty%20Pharma%27s%20Revised%20Offer%20-%20June%203%2C%202013_tcm10-28955.pdf.

¹⁶ See

http://www.royaltypharma.com/PressReleases/Royalty_Pharma_Increases_Offer_to_Acquire_Elan_060713.pdf.

¹⁷ See <http://newsroom.elan.com/phoenix.zhtml?c=88326&p=irol-newsArticle&ID=1828242&highlight=>.

- RP management is the global leader in the market for investments in pharmaceutical royalty interests and dominates the high end.
- Elan with its restructuring of its interest in Tsabri and its acquisition of Theverance¹⁸ (announced on 13 May 2013 and subject to shareholder approval) is an important new entrant into that market, including at the high end.
- By purchasing Elan, RP Management would eliminate an emerging competitor with consequential adverse effects for future investment in research and development in the pharmaceutical industry, in that the transaction will result in lower valuations of royalty interests.

These views, with which the notifying party disagrees, will be examined below as part of the analysis of the proposed transaction.

17. As part of its investigation the Authority contacted a number of participants in the industry ranging from pharmaceutical companies to research and development centres. None of the parties contacted expressed views suggesting that the merger would lead to a substantial lessening of competition.

Analysis of the Proposed Transaction

Developments Pre-May 2013

18. Neither RP Management nor [Entity A] are involved in the discovery, development, manufacture or marketing of biopharmaceutical products. RP Management's portfolio of royalty interests includes a wide range of pharmaceutical drugs developed, manufactured and marketed by a number of pharmaceutical companies, but the strategy emphasizes acquiring only royalty interests.¹⁹ With a few exceptions, RP Management is not involved in acquiring meaningful rights over intellectual property. The process generally involves the transfer of a right to receive royalty payments, and while RP Management's consent may be needed before certain actions are taken, the substantive ownership and control of the intellectual property typically stays with the licensor.
19. At least until May 2013 (a number of weeks after RP management announced its offer) Elan was not involved in the acquisition of royalty interests in marketed and late stage development biopharmaceutical products.
20. There was therefore no horizontal overlap between the undertakings pre-May 2013.

Recent Developments

21. The Authority is aware that:

¹⁸ See <http://newsroom.elan.com/phoenix.zhtml?c=88326&p=irol-newsArticle&ID=1818419&highlight=> and see also <http://newsroom.elan.com/phoenix.zhtml?c=88326&p=irol-newsArticle&ID=1818420&highlight=> and <http://www.reuters.com/article/2013/05/13/us-elan-theravance-idUSBRE94C04V20130513>.

¹⁹ See http://www.royaltypharma.com/index.php?option=com_content&view=article&id=6&Itemid=13.

- On 2 April Elan closed the Tysabri transaction with Biogen, stating at that time as follows:

"Upon the closing of the Tysabri transaction Elan will, in accordance with applicable law and regulation (including by obtaining any required consents or approvals), execute along three dimensions:

I. Strategic Initiatives: A portion of the \$3.25 billion will be invested into a variety of business assets. From a portfolio point of view, these assets will, characteristically, diversify Elan from a product, science/clinical, therapeutic, and geographic point of view. As mentioned previously, in anticipation of agreeing to the Tysabri restructuring, we have spent significant time evaluating assets around the world and establishing relationships that might ultimately lead to constructive strategic transactions. ...

II. Debt Refinancing: Following closing of the Tysabri transaction, Elan will refinance its outstanding debt. We have worked closely with the credit markets over the past ten years and value the access to capital and long standing relationships that we have with our creditors. Details regarding the refinancing will be made public following the close of the Tysabri restructuring.

III. Share Repurchase: Following closing, we will institute a share repurchase program by utilizing \$1 billion of the upfront proceeds from the Tysabri restructuring, with the method to be detailed following the transaction closing. This enables a significant portion of the unlocked value of Tysabri to be returned to shareholders directly. Additionally, and as outlined previously, the upfront cash payment to Elan will have little to no tax burden and part of our objective is to enable shareholders to benefit directly from that structural advantage. Following this transaction, Elan retains over \$1.5 billion in accumulated tax losses and other structures as well as our favorable Irish tax structure. We greatly value our shareholder relationships and the access to equity capital these relationships give us and we appreciate the time horizon of many of our long term holders. We will continue to work on ways to unlock incremental value to their direct benefit."²⁰

- On 13 May 2013 Elan announced that it had entered into an agreement, subject to shareholder approval, with Theravance Inc. for the purchase of a 21% participation interest in potential future royalty payments relating to four respiratory drugs currently in development for \$1 billion cash.²¹
- On 20 May, 2013, Elan announced additional proposed transactions subject to shareholder approval, namely:²²

²⁰ See <http://newsroom.elan.com/phoenix.zhtml?c=88326&p=irol-newsArticle&ID=1787913&highlight=>.

²¹ See <http://newsroom.elan.com/phoenix.zhtml?c=88326&p=irol-newsArticle&ID=1818419&highlight=> and see also <http://newsroom.elan.com/phoenix.zhtml?c=88326&p=irol-newsArticle&ID=1818420&highlight=> and <http://www.reuters.com/article/2013/05/13/us-elan-theravance-idUSBRE94C04V20130513>.

²² <http://newsroom.elan.com/phoenix.zhtml?c=88326&p=irol-newsArticle&ID=1821859&highlight=> and see http://www.manufacturingchemist.com/news/article_page/Elan_buys_AOP_Orphan_and_takes_stake_in_Newbridge_Pharmaceuticals/88505.

- The acquisition of 100% of AOP Orphan Pharmaceuticals for €175.7 million cash, €87.8 million in ordinary shares, and potential cash milestone payments of up to €270 million.
 - The acquisition for €40 million of a 48% interest in Newbridge Pharmaceuticals and an option to purchase the remaining interest by 2015 for €244 million.
 - The divestment of ELND005 to Speranza Therapeutics and the commitment of \$70 million plus up to a future \$8 million *"for an 18% minority equity position, royalties in major markets along with additional milestones, and retention of commercial rights in certain territories and jurisdictions."*
 - A debt offering of \$800 million, a \$200 million share repurchase program (details to be announced), and *"Theravance Royalty Participation Interest 20% pass through cash dividend added to existing Tysabri 20% dividend"*.
22. The effect of these transactions is to raise horizontal issues with respect to a possible acquisition of Elan by RP Management.

Competitive impact of the proposed transaction

23. Royalty monetization first appeared in the 1990s.²³ Royalties are paid by licensees (payors) to licensors (recipients). A royalty monetization transaction occurs between an investor and the licensor/recipient, such as a university, a research institution, or a small-to-medium size pharmaceutical company. The licensees/payors are often large biopharmaceutical companies.²⁴ Royalty monetization can take a variety of forms such as traditional royalty purchase, structured royalty purchase, royalty bonds (any kind of royalty-backed debt financing), and hybrid royalty bonds.²⁵

Product Market

24. The third party submissions allege the existence of a product market for investments in pharmaceutical royalty interests with special emphasis on the high end. The notifying party endorses a much broader market.
25. There does appear to be substitution among a variety of ways to monetize royalty streams, for instance through sale of an interest or through issuance of a royalty bond.
26. Regardless, the Authority considers that it is not necessary to define the product market with precision in this case since the proposed acquisition would not be seen to substantially lessen competition in the State when considered in terms of any plausible market.

²³ See <http://capitalroyalty.com/pdfs/the-evolution-of-healthcare-royalty-monetization-july-20101.pdf>. The predecessor to DRI began business in 1992. See <http://www.prnewswire.com/news-releases/drug-royalty-corporation-drc-announces-acquisition-regarding-enbreir-58070242.html>. For an overview of the growth of this kind of financing, see http://pharmaceuticalcommerce.com/index.php?pg=business_finance&articleid=1999.

²⁴ See <http://capitalroyalty.com/pdfs/the-evolution-of-healthcare-royalty-monetization-july-20101.pdf>.

²⁵ See <http://capitalroyalty.com/pdfs/the-evolution-of-healthcare-royalty-monetization-july-20101.pdf>. The notifying party informed the Authority that in [...].

27. That said, the Authority has doubts about whether a market could be defined with respect to high end monetizations — those valued at more than a certain dollar/euro threshold. Although it is widely recognized that Royalty Pharma is the leader in high end transactions,²⁶ royalty monetization is a new kind of investment and values have been increasing over time. Nowhere has the Authority seen evidence of recognition of a separate market starting at any particular dollar/euro threshold. Moreover, as discussed below, there is reason to believe that firms operating at smaller valuations could also operate, alone or through a team, at higher levels.
28. Although there is no need to define a geographic market, it clearly is wider than the State and likely is global. Most royalty monetization specialist firms are based in North America, as are most of the licensors who have been their customers.

Horizontal Overlap

29. Elan formally agreed (subject to shareholder approval) to spend \$1 billion to purchase a royalty interest from Theravance and is engaging in a variety of other activities as described above, and thus can be seen as a competitor of RP Management. If one were to calculate market shares based on estimated global assets under management dedicated to investments in healthcare/pharma royalty interests, RP Management's \$7 billion²⁷ would give it a very substantial market share, while counting the \$1 billion that Elan plans to pay Theravance and estimating the additional amounts that Elan could use to invest in royalty streams would give it a significant market share.²⁸
30. This calculation raises a number of questions, including whether assets under management provides a sound basis for evaluating competitive effect, whether there would remain sufficient competition post-transaction, whether entry is easy, whether Elan would likely be an important competitor were the transaction not to occur, and whether, to the extent that the transaction might harm competition, it might harm markets in the State.
31. Assets under management dedicated to royalty monetization is a very imperfect measure of competitive strength. It measures money previously invested, not money available to invest. The number includes royalty streams of widely differing years of remaining life. Revenues from investments are used for various purposes, including distributions to investors and management, debt service, management

²⁶ "Royalty Pharma is the industry leader in acquiring royalty interests in marketed and late stage biopharmaceutical products. With over \$7.5 billion in assets, including royalty assets of \$7 billion, the company owns royalty interests in over 30 marketed and late stage biopharmaceutical products. . . . The company has a fifteen year history of providing value to holders of royalty interests, including its \$700 million acquisition of AstraZeneca's Humira® royalty, its \$700 million purchase of a portion of Northwestern University's Lyrica® royalty, its \$650 million purchase of New York University's Remicade® royalty, its joint \$525 million acquisition with Gilead Sciences of Emory University's emtricitabine royalty interests, its \$609 million acquisition of Astellas' DPP-IV patent estate and associated royalty interests, and its \$761 million acquisition of an interest in the amounts payable to the former shareholders of Fumapharm on Biogen Idec's BG-12." See [http://www.royaltypharma.com/PressReleases/Royalty_Pharma_\\$600_million_Debt_Financing_Press_Release_May_24_2012.pdf](http://www.royaltypharma.com/PressReleases/Royalty_Pharma_$600_million_Debt_Financing_Press_Release_May_24_2012.pdf).

²⁷ See

[http://www.royaltypharma.com/PressReleases/Royalty_Pharma_\\$600_million_Debt_Financing_Press_Release_May_24_2012.pdf](http://www.royaltypharma.com/PressReleases/Royalty_Pharma_$600_million_Debt_Financing_Press_Release_May_24_2012.pdf).

²⁸ For instance, a leading royalty monetization firm, Healthcare Royalty Partners, manages over \$2 billion in capital. See <http://www.healthcareroyalty.com/content/aboutus/overview.htm>.

fees, and expenses, such that royalty monetization firms regularly seek to raise new money to invest. (For example, last year Royalty Pharma raised \$600 million of debt to fund future acquisitions.²⁹) Market share analysis usually looks at revenue, units supplied or capacity,³⁰ but the focus is on the future.³¹

32. Royalty monetization remains something of a new kind of investment. It grew rapidly up until the recession and has now resumed growing again. There are a significant number of participants in the business, including Athyrium Capital Management, LLC³², DRI Capital³³, Capital Royalty³⁴, Healthcare Royalty Partners³⁵, OrbiMed³⁶, Paul Capital Healthcare³⁷ and Visium Asset Management LP.³⁸ Non-specialist funds may also participate in royalty monetization.³⁹ As suggested above, there are a variety of ways to monetize royalties. In addition to involving third parties, the licensee (which owes the royalties) can choose effectively to monetize royalties by entering into an agreement to prepay them.⁴⁰
33. Entry into royalty monetization does not appear to be particularly challenging for persons and entities with expertise and access to capital. In May 2013, for instance, Visium Asset Management LP, a \$4.5 billion hedge fund, hired four people from Paul Capital and formed a new investment platform focused on healthcare royalties.⁴¹ OrbiMed, a healthcare investment firm managing approximately \$7 billion, launched a fund investing in royalty streams in 2011.⁴² New Health Capital Partners closed its inaugural investment fund in September 2011.⁴³ Athyrium Capital Management, LLC, with \$600 million under management, was formed in 2008.⁴⁴ Healthcare Royalty Partners, which manages over \$2 billion in capital, was launched in 2007 by

²⁹ See

[http://www.royaltypharma.com/PressReleases/Royalty_Pharma_\\$600_million_Debt_Financing_Press_Release_May_24_2012.pdf](http://www.royaltypharma.com/PressReleases/Royalty_Pharma_$600_million_Debt_Financing_Press_Release_May_24_2012.pdf). Fund-raising by rival firms is discussed below.

³⁰ Authority, Notice in Respect of Guidelines for Merger Analysis ("Merger Guidelines") at paragraph 3.5.

³¹ In bidding markets characterized by auctions for contracts, existing market shares may not be a good indicator of how competition will develop in the future. See Merger Guidelines at paragraph 4.16. The notifying party informed the Authority that investment banks are increasingly arranging sales of royalty interests through a formal or informal bid process.

³² See <http://athyrium.com/>.

³³ See <http://www.dricapital.com/investment.php>.

³⁴ See <http://www.capitalroyalty.com/>.

³⁵ See <http://www.healthcareroyalty.com/>.

³⁶ See <http://www.orbimed.com/en>.

³⁷ See <http://www.paulcap.com/InvestmentPlatforms/Healthcare/AboutUs.aspx>.

³⁸ See <http://www.businesswire.com/news/home/20130530005228/en/Visium-Asset-Management-Forms-Healthcare-Royalty-Investment>.

³⁹ See

http://www.cppib.ca/files/F2013/YE13_Annual_Report/CPPIB_Online_Annual_Report_2013_-_English.pdf (Canadian Pension Plan, annual report at 50) (the CPP Fund has \$183.3 billion in assets, see <http://www.cppib.ca/Default.html>, and the Authority understands that the plan has a very substantial amount of assets under management dedicated to investments in healthcare/pharma royalty interests).

⁴⁰ For example, Celgene prepaid a royalty obligation for \$425 million, see Celgene 2008 Form 10K p. 95, available at <http://ir.celgene.com/phoenix.zhtml?c=111960&p=irol-sec>; and Forest Laboratories, Inc. spent \$370 million partially to prepay royalties, see <http://news.frx.com/press-release/product-news/forest-laboratories-inc-announces-amendment-bystolicm-nebivolol-agreement>.

⁴¹ See <http://www.businesswire.com/news/home/20130530005228/en/Visium-Asset-Management-Forms-Healthcare-Royalty-Investment>.

⁴² See <http://www.orbimed.com/en/about-us/firm-history>.

⁴³ See <http://www.newhealthcap.com/about>. New Health Capital Partners' products include royalty monetizations, structured senior loans and acquisitions of "legacy" pharmaceuticals. See <http://www.newhealthcap.com/investment-products>.

⁴⁴ See <http://athyrium.com/>.

several employees of Paul Capital.⁴⁵ Capital Royalty, with \$1.3 billion under management, was founded in 2003. Paul Capital Healthcare, with \$1.6 billion in equity capital and debt facilities, was established in 1999 by Paul Capital⁴⁶. (Paul Capital was itself founded in 1991 and manages more than \$7.3 billion "*across three distinct investment platforms*".⁴⁷) Indeed, the predecessor firms to Royalty Pharma were founded only in 1996.⁴⁸ The most recent entrant (or possible entrant) is Elan, with its tentative purchase of a participation interest in potential future royalty payments relating to four respiratory drugs.

34. As suggested by the above, the relevant expertise can lie in individuals who are mobile. In addition to specialist professionals, many employees of small and large pharmaceutical development companies specialise in the calculation of future cash flows and the risk analysis associated with pharmaceutical drug development. The numbers needed to participate in royalty monetization are small – for instance, Royalty Pharma has only 21 employees, [...].⁴⁹ The notifying party informed the Authority that it relies extensively on third party expert networks and consultancies (firms such as Gerson Lehrman Group⁵⁰) for research and expert analysis. This kind of expertise and consultation would also be available to others.
35. The other requisite to participate in royalty monetization – access to capital – also does not appear to be a particularly substantial hurdle. DRI Capital is closing out a new \$1 billion fund that is reportedly likely to end up oversubscribed.⁵¹ In May 2013 Capital Royalty closed an oversubscribed investment fund at \$805 million.⁵² In January 2012 Healthcare Royalty Partners announced that it had raised approximately \$1 billion in new capital, exceeding its initial target by more than 75%.⁵³
36. Despite the expanding list of competitors which have entered and now compete in royalty monetization, it appears that the majority of transactions valued at more than \$250 million continue to involve Royalty Pharma. Even if there is no well-defined market starting at any particular threshold, there is a question about Royalty Pharma's remarkable string of success. Moreover, many of Royalty Pharma's rivals state that they target investments of up to \$100 or \$200 million.⁵⁴
37. Although the matter is not without some uncertainty, there do appear to be several ways that firms can arrange to make substantial investments. It can be done directly, as when the predecessor of DRI, in 1997, invested \$300 million for a stream of royalties from the

⁴⁵ See <http://www.healthcareroyalty.com/content/aboutus/overview.htm>.

⁴⁶ See <http://www.paulcap.com/InvestmentPlatforms/Healthcare/AboutUs.aspx>.

⁴⁷ See <http://www.paulcap.com/AboutPaulCapital/Default.aspx>.

⁴⁸ See

http://www.royaltypharma.com/index.php?option=com_content&view=article&id=1&Itemid=6.

⁴⁹ See

http://www.royaltypharma.com/index.php?option=com_content&view=article&id=2&Itemid=7.

⁵⁰ See <http://www.glgresearch.com/>.

⁵¹ See <http://www.foundationendowment.com/Article/3185693/Drug-Royalties-Fund-Nears-1-Billion-Close.html>.

⁵² See <http://www.xconomy.com/texas/2013/05/02/houston-based-healthcare-investor-capital-royalty-closes-805m-fund/>.

⁵³ See <http://www.healthcareroyalty.com/content/news/releases/010512.htm>.

⁵⁴ For instance, Capital Royalty "target[s] investments between \$20 and \$200 million". See <http://www.capitalroyalty.com/about-us/>.

Massachusetts General Hospital.⁵⁵ Or a specialist firm can partner with a mainline investment firm, as Athyrium did when it partnered with Neuberger Berman Group LLC, a leading money manager, to raise money to invest in income-generating structured investments in global healthcare (the fund was oversubscribed and closed at \$507 million⁵⁶). Specialist firms can work together – for example it is reported that Paul Capital will collaborate with Visium, which will serve as a sub-advisor to Paul Capital's funds.⁵⁷ Joint bidding also appears to be common – for example, Capital Royalty was part of a consortium of investors that purchased royalty interests in two leading drugs for more than \$100 million in 2009 and it worked with a co-investor to provide more than \$100 million for an interest in a royalty stream in 2007.⁵⁸ The Authority also notes the steadily increasing sizes of these investments and the alternatives to straight sales of royalty interests.

38. The third party submissions claim that Elan is an emerging competitor in this market and could provide key competition to RP Management including at the high end of royalty monetization. However, even assuming shareholder approval of the Elan-initiated transactions, there are reasons to doubt any singular importance of Elan's possible role as a competitor to RP Management.
39. In particular, it is not clear that Elan would be a particularly important competitor in the segment of high end royalty monetization. Elan has been imprecise about the "*strategic initiatives*" in which it plans to engage in the future. Nowhere has the Authority seen a clear commitment to devote itself exclusively or even primarily to high end royalty monetization. To the contrary, the announcement of the Theravance transaction was followed by the series of transactions announced on 20 May 2013 as discussed above.
40. Nor is it clear that Elan would be singularly successful in competing with RP Management. Several of RP Management's rivals are well established, have competed successfully for years, and, as set out above, have raised substantial amounts of new money to invest. Elan has none of the track record and other advantages of current competitors. What Elan had was \$3.25 billion to spend. Now much of that money has been tentatively committed, as set out above, e.g., \$1.2 billion for share repurchase programs; \$1 billion payment to Theravance; plus the hundreds of millions for the transactions announced 20 May 2013. Although Elan participated (subject to shareholder approval) in one high value royalty monetization and could be receiving royalties in the future, there is no reason, looking ahead, to view it as an unusually important competitor.
41. The question before the Authority is whether the notified transaction will substantially lessen competition in markets for goods or services in the State. In this connection, it is noteworthy that few if any of the licensors involved in royalty monetizations have been based in Ireland. Moreover, RP Management has confirmed to the Authority that neither [Entity A] nor it has ever acquired a royalty interest from an Irish

⁵⁵ See <http://www.prnewswire.com/news-releases/drug-royalty-corporation-drc-announces-acquisition-regarding-enbreir-58070242.html>.

⁵⁶ See <http://athyrium.com/documents/AOFFinalClosePR.pdf> (fund will make \$25 - \$75 million investments).

⁵⁷ See <http://www.businesswire.com/news/home/20130530005228/en/Visium-Asset-Management-Forms-Healthcare-Royalty-Investment>.

⁵⁸ See <http://www.capitalroyalty.com/transactions/>.

licensor, [...]. And Elan has obviously not (and Theravance is not an Irish company). No Irish university, research institution, or pharmaceutical company considering participating as a licensor in a future royalty monetization transaction has expressed to the Authority any concern about the competitive effect of the proposed transaction.

42. In light of the above, the Authority considers that the proposed transaction will not substantially lessen competition in the State.

DETERMINATION

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition whereby RP Management, LLC through Echo Pharma Acquisition Limited would acquire sole control of Elan Corporation, plc will not be to substantially lessen competition in markets for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Stephen Calkins

Member of the Competition Authority

Director, Mergers Division