



# DETERMINATION OF MERGER NOTIFICATION M/16/031 - THERMO FISHER / FEI

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## Section 21 of the Competition Act 2002

### Proposed acquisition by Thermo Fisher Scientific Inc. of sole control of FEI Company

Dated 02 August 2016

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#### Introduction

1. On 27 June 2016, in accordance with section 18(1) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby Thermo Fisher Scientific Inc. (“Thermo Fisher”) would acquire sole control of FEI Company (“FEI”).

#### The Proposed Transaction

2. The proposed transaction is to be implemented pursuant to an agreement and plan of merger (“Merger Agreement”), dated 26 May 2016, between Thermo Fisher, FEI and Polpis Merger Sub Co. (“Polpis”).<sup>1</sup> Following implementation of the proposed transaction, FEI will become a wholly-owned subsidiary of Thermo Fisher.

#### The Undertakings Involved

##### *The Acquirer - Thermo Fisher*

3. Thermo Fisher, headquartered in Waltham, Massachusetts, USA, is a public company listed on the New York Stock Exchange. Thermo Fisher is a diversified company, which is involved in the production and sale of consumables and reagents (i.e., chemicals used in molecular and protein biology), analytical instruments, scientific equipment, services and software. Thermo Fisher, through its affiliates, operates in 50 countries located in Asia, Australasia, Europe, the Middle East, North America, South America and South Africa.
4. Thermo Fisher’s customers include pharmaceutical and biotech companies, manufacturers, hospitals and clinical diagnostic laboratories, universities, research institutions and government agencies, as well as industry customers.

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<sup>1</sup> Polpis is a wholly-owned subsidiary of Thermo Fisher and was incorporated for the purposes of the proposed transaction. Pursuant to the Merger Agreement, upon completion of the proposed transaction Polpis would merge with FEI, whereupon Polpis would cease to exist as a separate legal entity.



5. The majority (62%) of Thermo Fisher's global revenues are derived from the sale of consumables and reagents, while revenues from sales of instruments, equipment and software account for 25% and revenues from support services account for 13%.<sup>2</sup>
6. Thermo Fisher is involved to a limited extent in the manufacture and sale of optical microscopes and standalone micro-analysers (also known as x-ray detectors). Thermo Fisher is not involved in the manufacture, sale or distribution of electron microscopes<sup>3</sup> or related software. Nor is Thermo Fisher involved in servicing electron microscopes.<sup>4</sup>
7. Thermo Fisher also operates a distribution business which distributes Thermo Fisher laboratory products as well as products manufactured by third parties. Thermo Fisher does not, however, distribute any products manufactured by FEI.
8. Two Thermo Fisher subsidiaries have operations in the State:
  - (a) Fisher Scientific Ireland Limited ("Fisher Ireland"), based in Blanchardstown County Dublin, is involved in the distribution of a wide portfolio of Thermo Fisher products, such as reagents and consumables and analytical instruments, as well as products manufactured by other parties.<sup>5</sup>
  - (b) Stokes Bio Limited, based in Limerick, is involved in the development of analytical instruments for genetics.<sup>6</sup>
9. Thermo Fisher's customers in the State include pharmaceutical and biotech companies [...], customers in the medical sector, universities and other research institutions.
10. For the financial year ending 31 December 2015, Thermo Fisher's worldwide turnover was approximately €15.3 billion, of which approximately €[...] million was generated in the State.<sup>7</sup>

#### *The Target – FEI*

11. FEI, headquartered in Hillsboro, Oregon, USA, is a public limited company listed on the NASDAQ stock exchange. FEI is involved primarily in the design, manufacture and supply of (i) electron microscopes, and (ii) proprietary control software used for imaging, data acquisition, control and analysis. FEI has offices located in the USA as well as Europe, the Middle East, Asia and Australia.
12. FEI's customers are primarily active in the scientific research and industrial sectors. The supply and servicing of electron microscopes accounts for over [...] of FEI's global revenue. FEI only services its own FEI-manufactured electron microscopes.

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<sup>2</sup> Correspondence from Thermo Fisher to the Commission dated 15 July 2016. [...]

<sup>3</sup> Electron microscopes use a beam of electrons and electron or electrostatic lenses to focus the particles.

<sup>4</sup> Notification page 12.

<sup>5</sup> Fisher Ireland's wholly-owned subsidiary Doe & Ingalls Limited is also a distributor of life sciences products. Thermo Fisher states, in correspondence to the Commission dated 15 July 2016, that, within the State, some Thermo Fisher products are distributed by third parties.

<sup>6</sup> Thermo Fisher states, in correspondence to the Commission dated 15 July 2016, that [...].

<sup>7</sup> Calculated using the annual ECB exchange rate for 2015 of €1 = \$1.1095.



13. FEI does not have any subsidiaries located within the State nor does it operate branch offices within the State. FEI generates virtually all of its turnover in the State from the supply and servicing of electron microscopes.<sup>8</sup> FEI states that in 2015 it had two customers within the State: [...].<sup>9</sup>
14. For the financial year ending 31 December 2015, FEI's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.<sup>10</sup>

## Rationale for the Proposed Transaction

15. The notification states that:

*"FEI's product offering is complementary to Thermo Fisher's existing activities, in particular to Thermo Fisher's broad range of life sciences products. The Proposed Transaction will provide Thermo Fisher with the opportunity to expand to different customer groups, including FEI's customers within material science research and semiconductor manufacturing.... The combined business will be well positioned to continue to capitalise on the growing adoption of electron microscopy across all customer groups and especially in life sciences."<sup>11</sup>*

## Third Party Submissions

16. No submission was received.

## Competitive Analysis

### Market Definition

17. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant product markets. The Commission's conclusion concerning the competitive effects of the proposed transaction would be unaffected whether the relevant product market is defined broadly or more narrowly, e.g., whether the market is defined:
  - (a) broadly to comprise the supply of all microscopes<sup>12</sup> and related products and services (e.g., software and servicing), or
  - (b) narrowly to specify a distinct market for the supply of electron microscopes and related services.
18. Similarly, it is also not necessary for the Commission to define precise relevant geographic markets in this case. The scope of the geographic market, e.g., a national

<sup>8</sup> For more information on FEI see <<https://www.fei.com>>.

<sup>9</sup> Correspondence from FEI to the Commission dated 15 July 2016.

<sup>10</sup> Calculated using the annual ECB exchange rate for 2015 of €1 = \$1.1095.

<sup>11</sup> Notification pp. 9-10.

<sup>12</sup> The parties identify three main types of microscope, namely, electron microscopes, optical microscopes and scanning probe microscopes. Notification page 12.



market or market larger than the State, will not materially alter the competitive impact of the notified transaction in the State. Consequently, the Commission is of the view that the precise scope of the relevant geographic market can be left open in this instance. However, for the purposes of reviewing the proposed transaction, the Commission has considered the competitive effects of the proposed transaction in the State.

### *Competitive Effects*

19. There is no material horizontal overlap between the activities of Thermo Fisher and FEI in the State.
20. Thermo Fisher is not involved in the State in the supply of electron microscopes and related products and services. In contrast, FEI's only material involvement in the State is in the supply of electron microscopes and related products and services.<sup>13</sup> Therefore, on the basis of a narrow definition of the relevant market, there is no horizontal overlap between the activities of Thermo Fisher and FEI in the supply of electron microscopes and related products and services in the State.
21. Within a broader definition of the relevant product market (i.e. the supply of all microscopes and related services) there appears to be limited competition between Thermo Fisher and FEI within the State.<sup>14</sup> FEI's relatively low level of turnover in the State [...], which is derived almost entirely from the supply of electron microscopes and related products and services, indicates that FEI does not currently act as a significant competitive constraint on Thermo Fisher within the State in a broader potential market for the supply of all microscopes and related services.
22. There is no vertical relationship between Thermo Fisher and FEI within the State and the proposed transaction does not give rise to vertical competition concerns within the State.

### **Conclusion**

23. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

### **Ancillary Restraints**

24. No ancillary restraints were notified.

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<sup>13</sup> [...]. Notification page 12.

<sup>14</sup> [...].



## **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction, whereby Thermo Fisher Scientific Inc. would acquire sole control of FEI Company, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Gerald FitzGerald**  
**Member**  
**Competition and Consumer Protection Commission**