



# DETERMINATION OF MERGER NOTIFICATION M/20/037 – THERMO FISHER / BIO-SCIENCES

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## Section 21 of the Competition Act 2002

### Proposed acquisition by Thermo Fisher Scientific Inc. of sole control of Bio-Sciences Limited

Dated 19 January 2021

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#### Introduction

1. On 11 December 2020, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed acquisition whereby Life Technologies Europe B.V., a wholly-owned indirect subsidiary of Thermo Fisher Scientific Inc. (“Thermo Fisher”), would acquire sole control of Bio-Sciences Limited (“Bio-Sciences”) (the “Proposed Transaction”).

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a share purchase agreement (“SPA”) dated 4 December 2020 between Mr. Gerard Byrne, Mr. Brian Fitzpatrick (together, the “Sellers”) and Life Technologies Europe B.V.. Pursuant to the SPA, Thermo Fisher will, through its wholly-owned indirect subsidiary, acquire the entire issued share capital of Bio-Sciences from the Sellers and, thus, sole control of Bio-Sciences.

#### The Undertakings Involved

##### *The Acquirer – Thermo Fisher*

3. Thermo Fisher, a public company incorporated in the United States of America, supplies and manufactures laboratory equipment, analytical instruments, diagnostics and related products and services in approximately 50 countries worldwide.
4. Thermo Fisher supplies its customers globally through the following brands:



- *Thermo Scientific* - offers customers in research, diagnostics, industrial, and applied markets a range of analytical instruments as well as laboratory equipment, software, services, consumables<sup>1</sup> and reagents<sup>2</sup>;
  - *Applied Biosystems* - offers customers in research, clinical and applied markets integrated instrument systems, reagents, and software for genetic analysis;
  - *Invitrogen* - offers life science customers a range of consumables and instruments that accelerate research and ensure consistency of results;
  - *Fisher Scientific* - offers customers a portfolio of laboratory equipment and consumables, chemicals, supplies and services used in scientific research, healthcare, safety, and education markets;
  - *Unity Lab Services* – this is Thermo Fisher’s instrument and equipment services brand, which offers a complete portfolio of services from enterprise level engagements to individual instruments and laboratory equipment, regardless of the original manufacturer; and
  - *Patheon* – this is Thermo Fisher’s contract development and manufacturing brand.
5. Thermo Fisher also currently operates two websites for e-commerce:
- [www.fishersci.com](http://www.fishersci.com) is a platform selling Thermo Fisher products, franchised products, and non-franchised products; and
  - [www.thermoscientific.com](http://www.thermoscientific.com) is a platform selling Thermo Fisher products, including detailed scientific content and intuitive design tools for creating configurable products such as antibodies, peptides and oligonucleotides.<sup>3</sup>
6. In the State, Thermo Fisher’s products are supplied to pharmaceutical and biotech companies (such as, for example, [...]), universities (such as, for example, [...]) and research organisations.
7. Thermo Fisher is also active in the distribution of laboratory and life sciences products in the State through its distribution business, Customer Channel Group (“CCG”). These products include laboratory equipment (such as microscopes, weighing balances, freezers and centrifuges) and consumables. CCG has a sales office in Dublin and warehouse in Ashbourne, Co. Meath. In the European Economic Area (the “EEA”), [...] % of the products distributed by CCG are manufactured by third parties, with the remainder manufactured by Thermo Fisher.

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<sup>1</sup> Consumables refer to products such as plastic ware, glassware, chemicals, reagents and laboratory supplies.

<sup>2</sup> Reagents refer to substances which are used to create a chemical reaction.

<sup>3</sup> Peptides and oligonucleotides are molecules which are used in molecular biology, research, genetic testing and experiments.



8. For the financial year ending 31 December 2019, Thermo Fisher's worldwide turnover was approximately €22.8 billion, of which approximately €[...] was generated in the State.

#### *The Target – Bio-Sciences*

9. Bio-Sciences is a private limited company, incorporated and headquartered in the State. It is currently owned and controlled by two individuals, Mr Gerard Byrne and Mr Brian Fitzpatrick, who each hold 50% of the issued share capital.
10. Bio-Sciences is a third-party distributor of laboratory supplies and equipment, primarily to the biotechnology sector. The products distributed by Bio-Sciences predominantly fall into three categories: (a) reagents and chemicals used in a variety of laboratory techniques; (b) consumables and plastics (such as disposable pipettes and gloves); and (c) equipment (such as freezers and incubators).
11. Bio-Sciences offers over 35,000 catalogue items for sale as part of its portfolio. Approximately [...]%, by total revenue generated in the State, of the products distributed by Bio-Sciences are produced by Thermo Fisher, with the remaining [...]% manufactured by a number of third parties.<sup>4</sup>
12. For the financial year ending 31 December 2019, Bio-Sciences' worldwide turnover was approximately €[...] million, of which the vast majority was generated in the State.

#### **Rationale for the Proposed Transaction**

13. The notifying parties state the following in the notification:

*“The Proposed Transaction presents an opportunity for Thermo Fisher to acquire a business that already predominantly distributes products manufactured by the Thermo Fisher group, and to realise efficiencies in the distribution of its products in Ireland....[...]”.*

#### **Third Party Submissions**

14. No submission was received.

#### **Competitive Assessment**

##### *Horizontal Overlap*

15. There is a horizontal overlap between the business activities of Thermo Fisher and Bio-Sciences in the State as both distribute laboratory and life sciences products.

##### Market Definition

##### *Relevant Product Market*

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<sup>4</sup> These include [...].



16. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case.
17. The Commission has not previously examined the distribution of laboratory and life sciences products. The European Commission has previously left open the precise relevant product market definition when considering the distribution of laboratory and life sciences products. In *M.6944 – Thermo Fisher Scientific/Life Technologies*, the European Commission concluded that “*the relevant product market is likely to be the distribution of all laboratory and life sciences products.*”<sup>5</sup> In *M.8552 – Avantor/VWR*, the European Commission concluded that the relevant product market can be left open as to whether it encompasses the distribution of all laboratory and life science products, all laboratory products, or only laboratory chemicals.<sup>6</sup>
18. The notifying parties provided the following view in the notification about the relevant product market:

*“The parties submit that, while the precise market definition can be left open in this case, in light of the decisional practice of the European Commission, the appropriate basis on which to analyse the Proposed Transaction is by reference to the distribution of laboratory and life sciences products.”*

19. For the purposes of assessing whether the Proposed Transaction will result in a substantial lessening of competition in the State, the Commission examined the competitive effects of the Proposed Transaction in the potential market for the distribution of laboratory and life sciences products.

#### *Relevant Geographical Market*

20. In *M.6944 Thermo Fisher Scientific/Life Technologies*, the European Commission considered the relevant geographic market for the distribution of laboratory and life sciences products to be at least national in scope.<sup>7</sup> In *M.8552 – Avantor/VWR*, the European Commission did not come to a definitive view on the precise geographic market definition and noted that there were indications of a potentially broader EEA-wide geographic scope.
21. The notifying parties provided the following view in the notification in respect of the possible product market:

*“The parties submit that in this case it is not necessary for the CCPC to reach a firm view on the geographic scope of relevant markets, as the Proposed Transaction does not give rise to the*

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<sup>5</sup> See paragraph 344 of merger decision *M.6944 – Thermo Fisher Scientific/Life Technologies*, which is available at: [https://ec.europa.eu/competition/mergers/cases/decisions/m6944\\_20131126\\_20212\\_3661859\\_EN.pdf](https://ec.europa.eu/competition/mergers/cases/decisions/m6944_20131126_20212_3661859_EN.pdf)

<sup>6</sup> See paragraph 123 of merger decision *M.8553 – Avantor/VWR*, which is available at: [https://ec.europa.eu/competition/mergers/cases/decisions/m8522\\_2202\\_3.pdf](https://ec.europa.eu/competition/mergers/cases/decisions/m8522_2202_3.pdf)

<sup>7</sup> See paragraph 345 of merger decision *M.6944 – Thermo Fisher Scientific/Life Technologies*, which is available at: [https://ec.europa.eu/competition/mergers/cases/decisions/m6944\\_20131126\\_20212\\_3661859\\_EN.pdf](https://ec.europa.eu/competition/mergers/cases/decisions/m6944_20131126_20212_3661859_EN.pdf)



*prospect of a substantial lessening of competition on any plausible basis.”*

22. The Commission does not need to come to a definitive view about the relevant geographic market in this instance since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant market is defined narrowly (i.e., the State) or more broadly (i.e., the EEA). For the purposes of assessing whether the Proposed Transaction will result in a substantial lessening of competition, the Commission has analysed the competitive effects of the Proposed Transaction by reference to the narrowest potential geographic market, i.e., the State.

#### *Conclusion on Market Definition*

23. For the purposes of its competitive analysis, the Commission has assessed the competitive impact of the Proposed Transaction in the potential market for the distribution of laboratory and life sciences products in the State.

#### Competitive Analysis

24. Table 1 below lists the parties' estimated shares in the potential market for the distribution of laboratory and life sciences products in the State.

**Table 1: Market shares by value in the distribution of laboratory and life sciences products in the State, 2018**

| <b>Supplier</b>               | <b>Estimated Share (by value)</b> |
|-------------------------------|-----------------------------------|
| Thermo Fisher                 | [5-10]%                           |
| Bio-Sciences                  | [0-5]%                            |
| <b>Combined</b>               | <b>[10-15]%</b>                   |
| Merck/MilliporeSigma Limited  | [20-25]%                          |
| VWR International Limited     | [20-25]%                          |
| Lennox Laboratory Limited     | [5-10]%                           |
| Mason Technology Limited      | [5-10]%                           |
| P.J Brennan & Company Limited | [5-10]%                           |
| Reagecon Diagnostics Limited  | [0-5]%                            |
| Analab (SLS) Limited          | [0-5]%                            |
| Others                        | [15-20]%                          |
| <b>Total</b>                  | <b>100.0%</b>                     |

Source: The notifying parties, based on internal and publically available information<sup>8</sup>

25. On the basis of the information available to the Commission during its review of the Proposed Transaction, the Commission considers that the Proposed Transaction raises

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<sup>8</sup>The notifying parties informed the Commission that when calculating market share estimates, they relied upon published accounts, where available of relevant suppliers and, where no published accounts are available in respect of a relevant supplier, Dun and Bradstreet databases (see: <https://www.dnb.com/>), which provide market intelligence, commercial data, analytics, and insights for businesses.



no horizontal competition concerns in the distribution of laboratory and life sciences products in the State for the following reasons.

26. First, following implementation of the Proposed Transaction, Thermo Fisher's share of the potential market will increase by only [0-5] percentage points (from [5-10]% to [10-15]%). As noted above in paragraph 11, [...]%, by total revenue, of the products distributed by Bio-Sciences in the State are already manufactured or produced by Thermo Fisher, with the remaining [...]% manufactured by a number of third parties.
27. Second, as illustrated in Table 1 above, Thermo Fisher will continue to face a competitive constraint from a number of other distributors of laboratory and life sciences products in the State following completion of the Proposed Transaction. These include Merck/MilliporeSigma Limited ([20-25]%), VWR International Limited ([20-25]%), Lennox Laboratory Limited ([5-10]%), and P.J Brennan & Company Limited ([5-10]%).
28. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the market for the distribution of laboratory and life sciences products in the State.

#### *Vertical Relationship*

29. There is a vertical relationship between Thermo Fisher and Bio-Sciences in the State as the former manufactures a range of laboratory and life sciences products which the latter distributes in the State.
30. On the basis of the information available to the Commission during its review of the Proposed Transaction, the Commission considers that the Proposed Transaction raises no vertical competition concerns in the State for the following reasons.

#### *Customer Foreclosure*

31. First, the Proposed Transaction will not give Thermo Fisher the ability to foreclose upstream manufacturers of laboratory and life sciences products by refusing to distribute their products in the State (or by increasing the price of such distribution services). As detailed in Table 1 above, there are a number of alternative providers of distribution services in the State available to manufacturers of laboratory and life sciences products, including Merck/MilliporeSigma Limited, VWR International Limited, and P.J Brennan & Company Limited. Manufacturers will also have the option to distribute their products through direct distribution.

#### *Input Foreclosure*

32. Second, the Proposed Transaction will not give Thermo Fisher the ability or incentive to foreclose distributors of laboratory and life sciences products in the State.
33. Following completion of the Proposed Transaction, there will remain a number of manufacturers of laboratory and life sciences products in the State. These include manufacturers who distribute their products through direct distribution (such as for example, Reagecon Diagnostics Limited) and those who distribute their products



through third party distributors. Third party distributors generally sell laboratory and life sciences products from a wide range of manufacturers. For example, VWR International Limited distributes laboratory and life sciences products in the State sourced from four thousand manufacturers (such as, for example, Whatman Plc, Bel-Art Products Inc. and Merck/MilliporeSigma Limited).<sup>9</sup> Distributors in the State will continue to have a large number of manufacturers of laboratory and life sciences products to choose from following completion of the Proposed Transaction.

34. In addition, Thermo Fisher expressed the following view in the notification about the likelihood of it pursuing an input foreclosure strategy following completion of the Proposed Transaction:

*“Life sciences manufacturers, including Thermo Fisher, have an incentive to rely on a number of distribution channels and distributors to achieve as wide sales of their products as possible. This is illustrated by the current strategy of Thermo Fisher, which in addition to engaging in direct sales and distribution through its CCG division, also sells a number of products through third-party distributors. The Proposed Transaction will not change in any way this incentive to pursue Thermo Fisher’s multi-channel strategy of accessing the marketplace, in Ireland or elsewhere.”*

35. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

### Conclusion

36. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

### Ancillary Restraints

37. The SPA contains a number of non-compete and non-solicitation obligations on the Sellers.<sup>10</sup> The duration of these restrictive covenants does not exceed the maximum duration acceptable to the Commission.<sup>11</sup> The Commission considers these restrictions to be directly related and necessary to the implementation of the Proposed Transaction insofar as they relate to the State.

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<sup>9</sup> See [https://us.vwr.com/cms/about\\_vwr\\_product\\_choice](https://us.vwr.com/cms/about_vwr_product_choice).

<sup>10</sup> See clause 16.1(a)-(c) and (e) of the SPA.

<sup>11</sup> In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



### **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby Life Technologies Europe B.V., a wholly-owned indirect subsidiary of Thermo Fisher Scientific Inc. would acquire sole control of Bio-Sciences Limited 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

**Brian McHugh**  
**Member**  
**Competition and Consumer Protection Commission**