

SIMPLIFIED NOTIFICATION OF A COMPANY CONCENTRATION

BETWEEN

Merck & Co., Inc.

AND

Certain assets of Elanco Animal Health, Inc.

7 March 2024

Contains business secrets

Confidential information for MSD is marked in **green**

Confidential information for Elanco is marked in **blue**

Confidential information for both parties is marked in **yellow**

1 CONTACT INFORMATION

1.1 Notifying party

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1.2 Target Business

Name: Elanco Animal Health, Inc.
Company reg no.: 82-5497351
Address: 2500 Innovation Way Greenfield, IN 46140 USA
Postal address: 2500 Innovation Way Greenfield, IN 46140 USA
Phone number: [REDACTED]
E-mail: [REDACTED]

2 THE TYPE OF CONCENTRATION OF UNDERTAKINGS

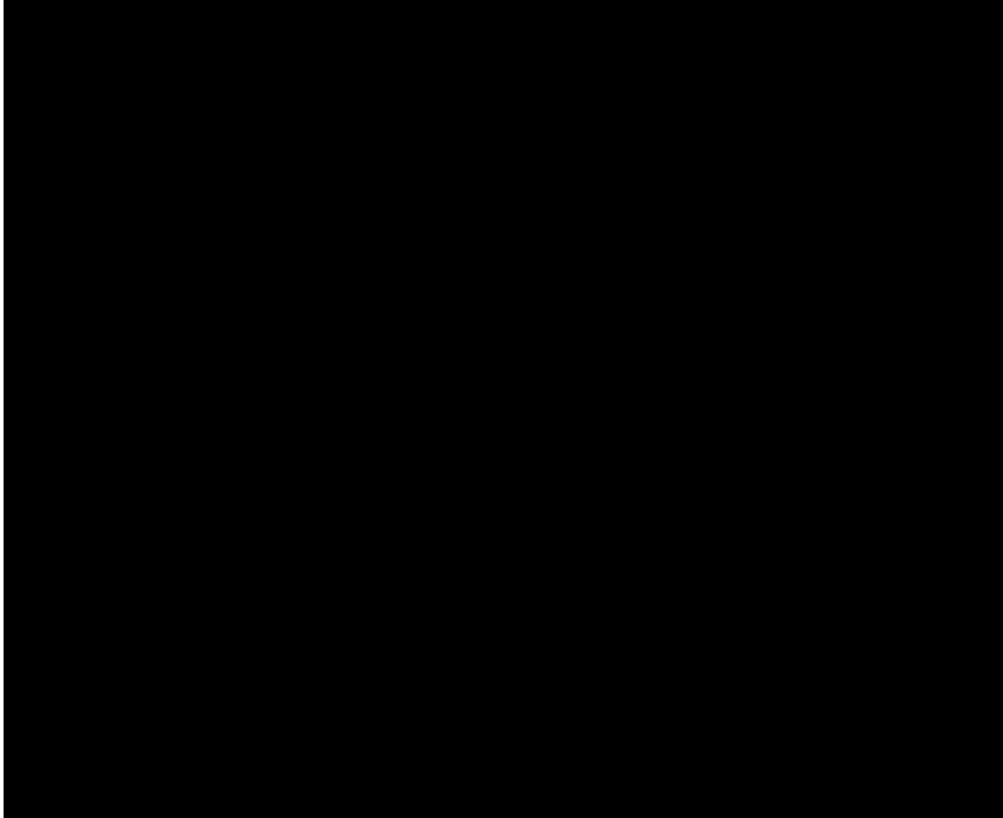
This simplified notification is filed pursuant to Section 18 cf. Section 17 of the Norwegian Competition Act on behalf of Merck & Co., Inc., known as MSD outside of the United States and Canada ("**MSD**") in connection with MSD's acquisition of certain business and assets from Elanco Animal Health, Inc. ("**Elanco**" and together with MSD, the "**Parties**").

Pursuant to an asset purchase agreement dated 5 February 2024 (the "**Asset Purchase Agreement**"), MSD will [REDACTED] acquire Elanco's business and assets within aquaculture, which includes a portfolio of medicines and vaccines, nutritionals and supplements for aquatic species, in addition to two manufacturing facilities in Canada and Vietnam and a research facility in Chile (combined, the "**Target Business**"), from Elanco (the "**Transaction**"). The Transaction entails that MSD will indirectly obtain

[REDACTED]

sole control over the Target Business on a lasting basis, cf. Section 17 of the Norwegian Competition Act.

A corporate structure chart for MSD is included below:



The Transaction is subject to a merger notification in Norway pursuant to Section 18 cf. Section 17 of the Norwegian Competition Act, as each of the undertakings concerned achieved turnover exceeding NOK 100 million and their combined turnover exceeded NOK 1 billion in Norway in the last financial year (financial information for 2022 has been used, as the financial information for 2023 was not audited on the date of signing of the Asset Purchase Agreement).

3 THE CONDITIONS FOR SUBMITTING SIMPLIFIED NOTIFICATION ARE SATISFIED


The Transaction qualifies for a simplified notification in accordance with Section 3 first paragraph item 3 letter a) of the Regulations on the Notifications of Concentrations. As further explained below, the Transaction will not lead to any horizontal or vertical overlaps between the Parties.

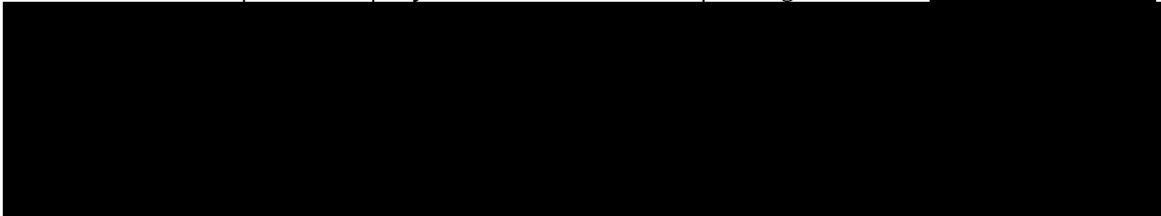
4 THE STRUCTURE AND BUSINESS AREAS OF THE UNDERTAKINGS

4.1 Notifying party

4.1.1 *Legal and organizational structure*

MSD is a public company incorporated in the State of New Jersey, US, with headquarters in New Jersey. The company is listed on the New York Stock Exchange under the ticker MRK.

MSD is the ultimate parent company of several subsidiaries operating worldwide. 



In Norway, MSD has four registered subsidiaries; MSD (Norge) AS, MSD Animal Health Innovation AS, MSD Animal Health Norge AS and OS ID AS.

MSD (Norge) AS is a MSD subsidiary which focuses on product sales in human health pharmaceuticals and corresponding research in areas such as AIDS, diabetes, heart diseases, infectious diseases, and vaccines. MSD (Norge) AS conducts clinical trials, which include trials for cardiovascular diseases, diabetes, vaccines, neurology and many types of cancer.²

MSD Animal Health Innovation AS and **MSD Animal Health Norge AS** are MSD subsidiaries active in the research, development, marketing and sale of animal health bio-pharmaceuticals and technology solutions. Their portfolio includes products covering prevention, treatment, and disease control for both livestock (farm animals) and pets (companion animals).³

OS ID AS provides visual and electronic identification OS ID ear tags which ensure traceability down to the level of the individual animal. OS ID products track the identity of livestock and enable the collection of valuable data on the animals' health, welfare and productivity.⁴

An overview of MSD's subsidiaries and its organizational structure may be found in its annual report, see section 8 below.

4.1.2 *Areas of business*

4.1.2.1 General

MSD is a biopharmaceutical group that delivers innovative health solutions through its prescription medicines, including biologic therapies, vaccines and animal health products. MSD's operations are

² <https://www.msd.no/msd-i-norge/>.

³ <https://www.msd-animal-health.no/>.

⁴ <https://www.osid.com/>.

principally managed on a product basis and include two operating segments, Pharmaceutical and Animal Health.

- The Pharmaceutical segment includes human health pharmaceutical and vaccine products. Human health pharmaceutical products consist of therapeutic and preventive agents, generally sold by prescription, for the treatment of human disorders.
- The Animal Health segment discovers, develops, manufactures and markets a wide range of veterinary pharmaceutical and vaccine products, as well as health management solutions and services, for the prevention, treatment and control of disease in all major livestock and companion animal species. MSD also offers an extensive suite of digitally connected identification, traceability and monitoring products. MSD sells its products to veterinarians, distributors, animal producers, farmers and pet owners.

For more information about MSD, please visit <https://www.merck.com/>.

In Norway, MSD operates its human health business under the brand MSD, and its animal health business under the brand MSD Animal Health, which are the global human health and animal health business units of MSD. MSD offers innovative health solutions for human through medicines, vaccines and biologic therapies, while MSD Animal Health offers a product portfolio, ranging from prevention, treatment, and control of diseases for all common livestock and pets.

For more information about MSD's Norwegian business please visit <https://www.msd.no/> (human health business) and <https://www.msd-animal-health.no/> (animal health business).

4.1.2.2 Aquaculture

Within the aquaculture segment, MSD helps aquaculture producers and conservationists cultivate and maintain healthy and sustainable aquatic ecosystems. The company works collaboratively with fish farmers to improve fish health and welfare across fish species. In addition, MSD provides innovative medicines, vaccines, and technologies to promote sustainable growth in the aquaculture and conservation industry.

More information is available here: <https://www.msd-animal-health.com/products/aquaculture/>.

MSD has only a small footprint in aquaculture in Norway with approximately USD [REDACTED] in revenues in the financial year 2022 and only seven products currently marketed:

- **Aquaflor vet:** Aquaflor vet is a feed premix containing the broad-spectrum antibacterial agent florfenicol at a concentration of 50% by weight. It is presently registered for use in Japan, South

Korea, Norway, Chile, Canada, and the United Kingdom for the treatment of susceptible bacterial diseases in several fish species.⁵

- **Aqui-S vet:** Aqui-S vet is a sedative for use during the treatment, pumping, transportation, and handling of salmon and rainbow trout.⁶
- **Finquel vet:** Finquel vet is a widely-used anesthetic mainly used in fish farming during the vaccination process and any handling events that require the fish to be fully anaesthetized, such as lice counting.⁷
- **Slice vet:** Slice vet is a premix medicated feed. It is used for the treatment, prevention and control at group level of infestations of all parasitic stages of sea lice in Atlantic salmon.⁸
- **Ovadine:** Ovadine is a buffered 1% Iodine solution specifically formulated for use in disinfecting fish eggs, including salmon and trout eggs. It is widely used as a fish egg disinfectant to reduce the transmission of diseases between generations of fish.
- **Defoam FG-10:** Defoam FG-10 is a water dilutable, silicone defoamer for aqueous systems. It is used to reduce foam in tanks containing fish, especially during transport.
- **Vidalife:** Vidalife is a specially formulated water conditioner for the aquaculture industry. Vidalife helps to protect fish from abrasions by preserving the fish's natural mucous layer and can be used whenever fish are handled or moved.

⁵ The Norwegian marketing authorization ("MA") was granted 7 April 1994, with MA number 0000-07969. The MA holder is Intervet International B.V.

⁶ The Norwegian MA was granted 14 May 2013, with MA number 10-8077. The MA holder is Intervet International B.V.

⁷ The Norwegian MA was granted 5 December 2006, with MA number 02-1257. The MA holder is Intervet International B.V.

⁸ The Norwegian MA was granted 12 December 2000, with MA number 1999-04254. The MA holder is Intervet International BV.

4.2 Target Business

4.2.1 Legal and organizational structure

As mentioned, the transaction concerns a portfolio of medicines and vaccines, nutritionals and supplements for aquatic species, in addition to two manufacturing facilities in Canada and Vietnam and a research facility in Chile. MSD is still considering whether the creation of a separate entity to facilitate the transfer of some assets will be necessary.

The Target Business is currently owned by Elanco, a public company incorporated in Delaware, US, with headquarters in Indiana. Elanco is listed on the New York Stock Exchange under the ticker ELAN. Elanco is an independent animal health company. Elanco innovates and delivers products and services to prevent and treat disease in farm animals and pets, creating value for farmers, pet owners, veterinarians, stakeholders, and society as a whole. Elanco offers products in two primary categories: (i) Pet Health, focused on parasiticides, vaccines and therapeutics; and (ii) Farm Animal, consisting of products designed to prevent, control and treat health challenges, primarily focused on cattle (beef and dairy), swine, poultry, and aquaculture (cold and warm water) production.

The Target Business consists of Elanco's current aquaculture business, further described below.

The portfolio relevant to Norway currently lies within the Norwegian branch of Elanco Denmark Aps and registered as a Norwegian branch of a foreign company (Nw.: Norsk avdeling av utenlandsk foretak (NUF)) in the Norwegian Register of Business Enterprises (Nw.: Foretaksregisteret).

4.2.2 Areas of business (aquaculture)

Within the aquaculture segment, Elanco delivers products and services to help marine and fresh water aquaculture producers improve welfare, productivity and sustainability. The business within aquaculture is divided into two segments; cold water and warm water, and its portfolio consists of more than 90 products in the aqua ecosystem, including vaccines, anti-parasitic treatments, water supplements and nutrition.

More information is available here: <https://www.elancoaquaglobal.com/no/nb/index#about-us>.

Elanco is present in aquaculture in Norway with the following Target Business's products, with *Clynav* being the largest one:

- **Clynav:** Clynav is a DNA vaccine for active immunization of Atlantic salmon to reduce inhibition of growth, as well as reduce mortality and damage in the heart, skeletal muscle and pancreas caused by Pancreas Disease.¹²
- **Pentium Forte Plus vet:** Pentium Forte Plus vet is an injectable vaccine for active immunization of Atlantic salmon to reduce clinical symptoms and mortality caused by furunculosis (*Aeromonas salmonicida* subsp. *Salmonicida*), vibriosis (*Vibrio anguillarum* serotype O1 and O2a), cold water vibriosis (*Vibrio salmonicida*), IPNV (Infectious pancreatic necrosis) and winter sore (*Moritella viscosa*).¹³
- **Pyceze vet:** Pyceze vet is a pharmaceutical product indicated for the prevention of growth of fungal infections in the face of suspected or known challenges in farmed Atlantic salmon eggs and rainbow trout eggs, and for the prevention or reduction of fungal infections in farmed Atlantic salmon and rainbow trout kept in fresh water.¹⁴

5 TURNOVER IN NORWAY FOR THE LAST FISCAL YEAR (2022)

Name	Turnover (in NOK)
MSD	
Target Business	

6 NO AFFECTED MARKETS

6.1 Market definition

Whilst in broad terms, the product area concerned by the Transaction is aquaculture, MSD and the Target Business have no overlapping products.

The European Commission (the "EC") has consistently divided animal health products into three core areas, namely: (i) biologicals (such as vaccines); (ii) pharmaceuticals; and (iii) medicinal feed additives.¹⁵

¹² The Norwegian MA was granted 27 June 2017, with MA number EU/2/16/197/001. The MA holder is Elanco GmbH. The MA has unlimited validity.

¹³ The Norwegian MA was granted 10 July 2007, with MA number 07-4936. The MA holder is Elanco GmbH. The MA has unlimited validity.

¹⁴ The Norwegian MA was granted 15 June 2010, with MA number 08-5820. The MA holder is CZ Vaccines S.A.U.

¹⁵ Commission decision of 3 October 2014, M.7277 – *Eli Lilly/Novartis Animal Health*, para. 12; Commission decision of 9 November 2016, M.7917 – *Boehringer Ingelheim/Sanofi Animal Health Business*, para. 10; Commission decision of 8. June 2020, M.9554 – *Elanco Animal Health/Bayer Animal Health Division*, para. 8; Commission decision of 10 July 2009, M.5476 – *Pfizer/Wyeth*, para. 111.

The Target Business's products fall within the areas of biologicals (Clynav and Pentium Forte Plus) and pharmaceuticals (Pyceze), while MSD's products fall within the areas of pharmaceuticals and medicinal feed additives.

In all areas the EC has in its decisional practice opted for narrow markets depending on inter alia animal species and target disease.

Pharmaceuticals, where both parties have products, encompass a wide group of products that contain a variety of active substances to prevent or treat a large range of animal diseases and disorders. In its previous decisions, the Commission considered that pharmaceuticals for animal usage should be split into parasiticides, antimicrobials, endocrine treatments, anti-inflammation and analgesic pharmaceuticals.¹⁶ For animal health pharmaceuticals within these groups, the EC considered that the most important factors to be taken into account when defining a relevant product market would be:

- animal species;
- active ingredient;
- target pathology / scope of effectiveness;
- mode of administration;
- duration of efficacy; and
- duration of withdrawal period.

As for the geographic dimension, the Commission has consistently defined the markets as national in scope.¹⁷

6.2 The transaction entails no overlap

As described above, MSD has seven products marketed in Norway and the Target Business has three, none of which are substitutable. MSD does not market any products within the biological segment, and the Target Business does not have any products in the feed supplements segment.¹⁸

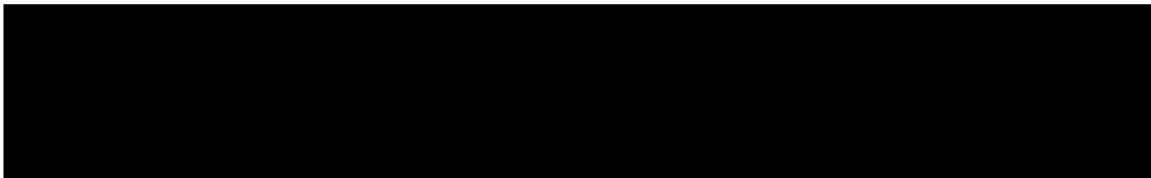
In the pharmaceutical segment MSD markets an antibacterial (Aquaflor 50%), a parasiticide (Slice), a sedative (Aqui-S) and an anaesthetic (Finquel powder), while the Target Business markets the product Pyceze, which is aimed at the prevention of growth of fungal infections. Based on the Commission's

¹⁶ Commission decision of 3 October 2014, M.7277 – *Eli Lilly/Novartis Animal Health*, para. 13.

¹⁷ Commission decision of 3 October 2014, M.7277 – *Eli Lilly/Novartis Animal Health*, para. 53, 58; Commission decision of 9 November 2016, M.7917 – *Boehringer Ingelheim/Sanofi Animal Health Business*, para. 36; Commission decision of 8. June 2020, M.9554 – *Elanco Animal Health/Bayer Animal Health Division*, para. 87; Commission decision of 10 July 2009, M.5476 – *Pfizer/Wyeth*, para. 20.

precedents, these products do not belong to the same market, regardless of the precise market definition, as they are indicated for different diseases/pathologies.

It is thus not necessary for the Competition Authority to conclude on the definition of the relevant markets. There is no competitive impact arising from the Transaction in any market.



7 VERTICAL EFFECTS

The Notifying Party have not identified any vertical relations or overlaps.

8 ANNUAL REPORTS AND FINANCIAL STATEMENTS

Both MSD's and Elanco's annual reports may be found online, please see:

<https://www.merck.com/investor-relations/financial-information/>

<https://investor.elanco.com/financials/annual-reports/default.aspx>



9 DISCLOSURE/PUBLIC ACCESS

This notification contains business secrets, cf. Section 18 b of the Competition Act. A proposal for a public version of the notification is enclosed. Enclosed is also an overview which explains why each type of redacted information constitutes business secrets. This explanation document is also considered as business secrets in its entirety.

Appendix 2: Public version of the notification

Appendix 3: Justification of business secrets

In the event that the notification or other documents in the case are not published on the Competition Authority's website, we kindly ask to be notified should the Competition Authority receive any requests for access to such documents.

Best regards
Advokatfirmaet Thommessen AS



Heidi Jorkjend
Advokat