EUROPEAN COMMISSION

Brussels, 21.12.2023
C(2023) 9283 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

EQT Fund Management S.à r.l.
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Grand Duchy of Luxembourg

Subject: **Case M.11186 – EQT / DECHRA**
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 17 November 2023, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which EQT Fund Management S.à.r.l. ("EQT", Luxembourg), a limited liability company (société à responsabilité limitée) acting as fund manager for and on behalf of the entities forming the investment fund EQT X, intends to acquire sole control over Dechra Pharmaceuticals PLC ("Dechra", the United Kingdom) within the meaning of Article 3(1)(b) of the Merger Regulation (the "Transaction").[3] EQT is designated hereinafter as the "Notifying Party", and EQT and Dechra together as the "Parties" or the "Merged Entity".

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").
3 Publication in the Official Journal of the European Union, OJ C, C/2023/1209, 24.11.2023.

1. THE PARTIES

(2) **EQT** is the alternative investment fund manager of EQT X, which is part of the EQT group of private equity funds. EQT X fund makes investments primarily in Europe but also in the US with a focus on the healthcare, technology, and business services sectors. EQT controls IVC Evidensia ("IVCE"), headquartered in Bristol, the United Kingdom, which is a group of companies providing veterinary services. IVCE operates a network of veterinary clinics and hospitals, crematoria, and fare-well centres at a total of approximately 2,500 sites globally and mainly focuses on veterinary services.

(3) **Dechra** is a UK-based globally active specialist animal pharmaceuticals and related products business that primarily develops, manufactures, markets and sells pharmaceutical products for various types of animals to veterinary professionals. Dechra's animal pharmaceuticals primarily cover the following therapeutic areas ("TAs"): endocrinology, dermatology (including otitis), anaesthesia and analgesia, cardiorenal, anti-infectives and gastrointestinal. It is a publicly traded company listed on the London Stock Exchange.

2. THE TRANSACTION

(4) On 2 June 2023, a special purpose vehicle controlled by EQT ("Bidco") announced a firm intention to launch a public tender offer to purchase the entire issued, and to be issued, ordinary share capital of Dechra. The offer price is approximately EUR 45 per share, valuing Dechra at approximately EUR 5.2 billion.

(5) Following the completion of the Transaction, EQT will via Bidco own approximately 74% shares of Dechra. The remaining 26% of Dechra's shares will be owned by Luxinva S.A., a minority shareholder that will not be afforded rights allowing it to veto decisions that are essential for the strategic commercial behaviour of Dechra or any other rights which would be considered as granting control under the Merger Regulation. Therefore, EQT will acquire sole control over Dechra within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[4] (EQT[5]: EUR […] million, Dechra: EUR 804.8 million). Each of them has a Union-wide turnover in excess of EUR 250 million (EQT: EUR […] million, Dechra: EUR […] million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

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

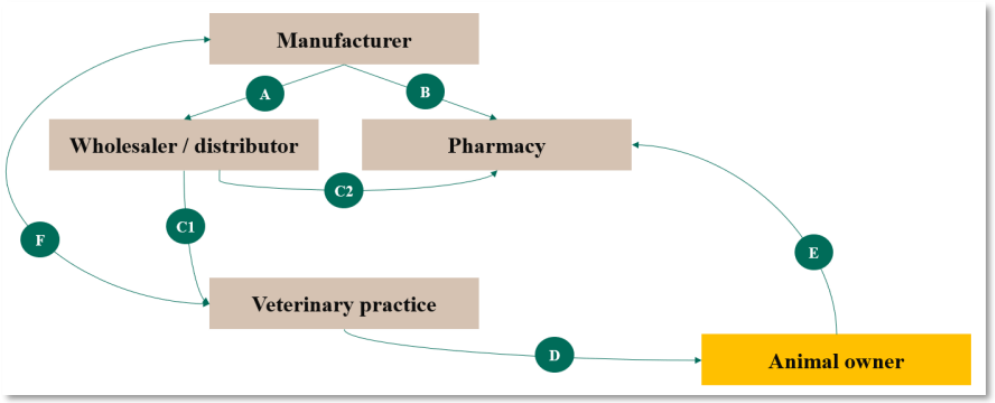
5 The provided turnover comprises the turnover of EQT AB and the most recently gathered and reported turnover data from the portfolio companies (solely or jointly) controlled by EQT and BPEA EQT branded funds (calculated according to the principles of the Merger Regulation and the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, 16.4.2008, p.1 (the "Consolidated Jurisdictional Notice")).

4. INTRODUCTION TO THE MARKETS AND THE PARTIES' ACTIVITIES

4.1. General structure of the markets for animal pharmaceuticals and veterinary clinics

(7) As background, the distribution of animal pharmaceutical products is often done by distributors or pharmacies in each EEA country.[6] As shown in Figure 1 below, depending on the EEA country, a manufacturer will supply its animal pharmaceutical products to a distributor or pharmacy (**A** and **B**), who is free to choose to whom it subsequently sells the products and at what price (**C1** and **C2**). Animal owners purchase the required animal pharmaceuticals from pharmacies or veterinary practices/clinics (**D** and **E**). Generally, manufacturers and veterinary practices/clinics do not have a direct supply relationship, but manufacturers would typically offer discounts to veterinary practices/clinics to make their products more attractive (**F**).

Figure 1: Schematic overview of the distribution chain for animal pharmaceuticals



Source: Form CO

(8) The main steps (A-F in Figure 1) can be summarized as follows.

(a) Manufacturers, e.g., Dechra, Zoetis, Boehringer Ingelheim Animal Health ("BIAH") or MSD Animal Health ("MSDAH"), develop and produce animal pharmaceuticals. In order to manufacture animal pharmaceuticals within the EEA, the manufacturer must hold a manufacturing authorisation for the products in question. In most Member States, the products are sold by the manufacturer to wholesalers/distributors (A) or pharmacies (B). However, in some Member States there also exist direct sales from manufacturers to veterinary practices (F);

(b) Wholesalers/distributors, e.g., Tamro, Covetrus and Oriola, acquire animal pharmaceuticals from manufacturers and resell the products to veterinary clinics (C1) or pharmacies (C2). In order to act as a wholesaler of animal pharmaceuticals within the EEA Member States, the wholesaler must hold a wholesaler authorization for individual Member States;

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[6] Germany and the Netherlands are the exception where it is more common for the manufacturers of veterinary pharmaceutical products to supply pharmaceutical products directly to the clinic without going through an intermediary.

(c) Veterinary clinics, e.g., IVCE, Anicura, CVS Group and independent veterinary clinics, prescribe, administer and/or dispense the pharmaceuticals to animal owners, either at clinics in jurisdictions where in-clinic sales of animal pharmaceuticals is allowed (D) or, in jurisdictions where pharmaceuticals are only available through pharmacies (e.g., Sweden, Norway, Denmark and Italy), by issuing a prescription to be fulfilled by the animal owner at a pharmacy (E) (similar to the human pharmaceutical sector).

(9) Veterinary clinics will generally order individual animal pharmaceuticals from wholesalers depending on the treatments they (expect to) provide and any related prescriptions of pharmaceuticals resulting from the treatment. There will in many cases also be an agreement regarding rebates between the manufacturer and veterinary clinics. Rebates are negotiated between the manufacturer and the veterinary clinic but given the presence of wholesalers, after the product is sold, the manufacturer generally issues a credit note, reflecting the agreed rebate, to the veterinary clinic and then pays the amount to the veterinary clinic.[7]

4.2. The Parties' activities

(10) Dechra is a manufacturer of animal health products, including animal pharmaceuticals and to a lesser extent pet food, while EQT through IVCE operates veterinary clinics across the EEA. The Transaction therefore gives rise to several vertical links as Dechra's products are considered inputs into IVCE's veterinary clinics. These vertical links give rise to affected markets, which will be discussed further below.

(11) For the sake of completeness, some of the EQT fund's portfolio companies are also active in markets upstream or downstream to those where Dechra is active, but without such markets being affected[8]:

(a) **Azelis**, headquartered in Luxembourg, is a global distributor of speciality chemicals and food ingredients representing global manufacturers within different markets,

(b) **Envirotainer**, headquartered in Sweden is a provider of cold chain solutions for the transportation of temperature-sensitive pharmaceuticals,

(c) **Zooplus** is an e-commerce retailer of pet supplies such as pet food and pet accessories for dogs, cats, small pets, birds, and aquatic, headquartered in Germany,

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7 Form CO, paragraph 379.

8 However, none of these vertical relationships give rise to affected markets within the meaning of recital 25(g) of the introduction of Annex I to Regulation (EU) 2023/914. Since such relationships typically do not give rise to serious doubts as to their compatibility with the internal market or functioning of the EEA Agreement and there are no indications to the contrary in this case, there relationships will not be further discussed in this decision.

5. RECIPHARM IS A SWEDISH CONTRACT DEVELOPMENT AND MANUFACTURING ORGANISATION THAT PROVIDES DRUG DEVELOPMENT AND MANUFACTURES SERVICES GLOBALLY.MARKET DEFINITIONS

5.1. Animal pharmaceuticals

5.1.1. Product market definition

5.1.1.1. The Commission's previous practice

(12) In previous cases in this sector, the Commission has divided animal health products into three main categories: (i) biologicals (such as vaccines), (ii) pharmaceuticals, and (iii) feed supplements.[9]

(13) In the present case, the Parties' activities give rise to affected markets only with respect to marketed animal pharmaceuticals. Animal pharmaceuticals 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. Within pharmaceuticals, the Commission has distinguished between pharmaceuticals across various therapeutic areas, in particular it has distinguished between parasiticides, otitis products, antimicrobials, endocrine treatments, anti-inflammatories, and analgesics.[10]

(14) The Commission has also conducted separate assessments for food production animals ("PA", i.e. swine, poultry, bovine) and companion animals ("CA", mostly cats and dogs).

(15) In addition, when defining relevant product markets in the area of animal pharmaceuticals, the Commission considered on a case-by-case basis the following factors as important as they might lead to separate markets:[11] (i) species (e.g. cats and dogs within CA; poultry, swine and cattle within PA, equine), (ii) active ingredient/chemical class, (iii) targeted pathology/indication, (iv) mode of administration ("MoA") (e.g. oral, topical, injection), (v) duration of efficacy for PA; and (vi) duration of the withdrawal period for PA[12]. Not each factor was considered for each type of pharmaceuticals.

5.1.1.2. The Notifying Party's view

(16) The Notifying Party agrees with the distinction between veterinary (i) biologicals, (ii) pharmaceuticals, and (iii) feed supplements.[13] The Notifying Party further submits that, given that the Transaction gives rise to vertical links only, further segmentation of the market for animal pharmaceuticals is not necessary.[14]

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9 For example, Case M.9554 – *Elanco Animal Health/Bayer Animal Health Division*, decision of 8 June 2020, Case M.7917 – *Boehringer Ingelheim/Sanofi Animal Health Business*, decision of 9 November 2016, M.7277 – *Eli Lilly/Novartis Animal Health*, decision of 3 October 2014.

10 Ibid.

11 Ibid.

12 The withdrawal period corresponds to the period after treatment during which an animal's meat or milk is considered unsuitable for human consumption.

13 Form CO, paragraph 265.

14 Form CO, paragraph 266.

5.1.1.3. The Commission's assessment

(17) The market investigation has confirmed the Commission's decisional practice with respect to the product market definition of animal pharmaceuticals.

(18) In particular, the vast majority of market participants responding to the market investigation agreed that: (i) animal pharmaceuticals form a product market distinct from animal biologicals and feed supplements, (ii) animal pharmaceuticals should be segmented by different animal groups (CA, PA and possibly equine), and that animal pharmaceuticals should be segmented by therapeutic areas.[15]

(19) However, within a specific therapeutic area, various animal pharmaceuticals are not generally considered substitutable, as they are used for treatment of different indications. A veterinary pharmaceutical intended for a specific indication generally cannot be used for treatment of a different indication.[16] For example, a Dechra product used for the treatment of Cushing's disease would not be substitutable with a treatment for Addison's disease even though both treatments belong to the field of endocrinology. Therefore, there is not always demand-side substitution for the various pharmaceuticals within a given therapeutic area.

(20) In addition, market participants confirm that players active in an individual therapeutic area typically do not offer an entire portfolio of products in that area,[17] and thus the competitive landscape for different indications even within a therapeutic area can differ considerably. Supply-side substitution is thus not immediate between various pharmaceuticals belonging to a given therapeutic area.

(21) In view of the above, for the purposes of this decision, the Commission considers it appropriate with respect to the assessment of vertical links between the Parties, to use the markets for animal pharmaceuticals across therapeutic areas as a starting point for the identification of affected markets but has based the more detailed assessment on the upstream markets for animal pharmaceuticals for each individual indication and/or for a specific animal group. Further differences between animal pharmaceuticals for a specific indication or animal group (which have an influence on the pool of available alternatives) based on the factors identified in paragraph (15) above, are taken into account in the Commission's competitive assessment.

5.1.2. Geographic market definition

5.1.2.1. The Commission's previous practice

(22) In its previous decisional practice, the Commission has consistently defined the market for marketed animal pharmaceuticals as national in scope.[18] This is due to the differences for example in national regulation and legislation, distribution

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15 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question C.A.1; Q2 - Questionnaire to veterinary clinics, Question C.A.1; and Q3 - Questionnaire to distributors, Question C.A.1.

16 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question C.A.3; Q2 - Questionnaire to veterinary clinics, Question C.A.3; and Q3 - Questionnaire to distributors, Question C.A.3.

17 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question C.A.4; Q2 - Questionnaire to veterinary clinics, Question C.A.4 and Q3 - Questionnaire to distributors, Question C.A.4.

18 For example, Case M.9554 – Elanco Animal Health/Bayer Animal Health Division, decision of 8 June 2020, Case M.7917 – Boehringer Ingelheim/Sanofi Animal Health Business, decision of 9 November 2016, M.7277 – Eli Lilly/Novartis Animal Health, decision of 3 October 2014.

systems, veterinarians' preferences, competitive landscape and pricing strategies of various players.

5.1.2.2. The Notifying Party's view

(23) The Notifying Party submits that the market is at least national in scope, but considers that there are indications of a shift towards wider (EEA-wide) markets as procurement procedures of animal pharmaceuticals are starting to cover wider geographic areas.[19]

5.1.2.3. The Commission's assessment

(24) The market investigation did not provide any indication that would require the Commission to depart from its previous decisional practice on the geographic scope of the markets for marketed animal pharmaceuticals.

(25) In particular, the majority of market participants responding to the market investigation agree with the Commission's past decisional practice that the markets for marketed animal pharmaceuticals are national in scope.[20]

(26) In view of the above, for the purposes of this decision, the Commission considers the markets for animal pharmaceuticals to be national in scope.

5.2. Veterinary clinics

5.2.1. Product market definition

5.2.1.1. The Commission's previous decisions

(27) The Commission has not in the past assessed the exact delineation of the market for the provision of veterinary clinics.[21]

5.2.1.2. The Notifying Party's view

(28) The Notifying Party argues that the assessment should concern the market for the provision of veterinary clinics as a whole and puts forward the following arguments:[22]

- All veterinarians compete against each other, regardless of their size, meaning that individual veterinarians are also in competition against chains of veterinary clinics. Although some treatments can only be offered by larger clinics (which can be referred to as animal hospitals), this does not undermine the fact that there is direct competition across the range of veterinary clinics, individual veterinarians and "one vet clinics".[23]

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19 Form CO, paragraph 279.

20 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question C.B.1; Q2 - Questionnaire to veterinary clinics, Question C.B.1 and Q3 - Questionnaire to distributors, Question C.B.1.

21 The Commission briefly referred to veterinary clinics in M.9019 Mars/Anicura, although the focus was on pet food products sold via veterinary clinics.

22 Form CO, paragraphs 280 and following.

23 The Notifying Party acknowledged that this distinction might be relevant for the Netherlands, given that some Dutch animal hospital only provide "referral services" as opposed to primary care services.

- It is not appropriate to distinguish the provision of veterinary clinics depending on the type of animal (CA, FA or equine) for the purposes of the current case (even though there may be variations depending on geographic location). This is because all veterinarians can offer their services regardless of the type of animal.

(29) In any event, the Notifying Party states that the product market definition can be left open as the Transaction would not give rise to competition concerns under any plausible market definition.

5.2.1.3. The Commission's assessment

(30) The Notifying Party's views do not find support in the market investigation, which provides indications that the market for the provision of veterinary services should be segmented based on the type of clinic, and animal group.

(31) As regards the segmentation based on the type of clinic, a majority of veterinary clinics that responded to the market investigation considered that primary care clinics (which would provide mainly basic and preventive care such as vaccination) and referral clinics (also known as animal hospitals, offering more advanced treatment such as medical operations of animals) were not interchangeable from the animal-owners' perspective.[24] Market participants raised several arguments in support of this view including:

- Referral clinics or animal hospitals generally offer more specialised care, such as complex surgery and 24-hour hospitalisation. One veterinary clinic for example explained: "*Referral clinics are typically operated with advanced practitioners or specialist veterinarians and do not generally offer primary care and instead focus on referrals*."[25]

- There exist some differences between the type of pharmaceuticals purchased by referral clinics compared to primary care clinics. Respondents stated in particular: "*Primary care clinics would use a more broad range of pharmaceuticals for all types of conditions*" and "*Primary care clinics will purchase a wider range of pharmaceuticals including those specifically for prevention, and often at higher volume, due to the higher treated case throughput. Specialist clinics will purchase based on the specialism offered. There will an overlap in the pharmaecutical* [sic] *purchased*".[26]

(32) As regards the segmentation based on the animal group, all veterinary clinics that responded to the market investigation confirmed that there are separate clinics for different groups of animals (CA, FA and equine).[27] This would be because for instance:

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24 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Questions D.A.1 and D.A.2; Response to Q2 - Questionnaire to veterinary clinics, Questions D.A.1 and D.A.2.

25 Response to Q2 - Questionnaire to veterinary clinics, Question D.A.2.

26 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question D.A.3; Response to Q2 - Questionnaire to veterinary clinics, Questions D.A.3. This conclusion was also shared by distributors of pharmaceutical products (please see Responses to Q3 - Questionnaire to distributors, Question D.A.1).

27 Response to Q2 - Questionnaire to veterinary clinics, Question D.A.5.

- Veterinarians are generally specialised in one type of animal group, where sometimes specific training is required. Market participants notably stated: "*Even though veterinarians are prepared to treat all species, most clinics focus on one group of species (either companion, equine or production), mixed practices are limited*", "*The progression of the veterinary science beholds a differentiation between these group of animals. Even as a general practitioner it is no longer possible to treat all kinds of animals at a good professional level.*" and "*The preparation and training of veterinarians differ depending on whether they are treating companion animals like dogs or cats, large animals like cows or horses, exotic animals like birds or reptiles, or even marine mammals like dolphins*".[28]

- Clinics explained that there are differences in the equipment used: "*We treat small animals at a veterinary clinic, we don't have equipment or medications for example for production animals or horses.*" and "*The equipment and formal training for the treating physician needs are very different according to the type of animal you are dealing with*".[29]

- Furthermore, respondents mentioned that there were differences in the types of pharmaceuticals that clinics for companion animals (smaller animals, pets), production animals (large animals, farm animals) and equine would prescribe. Feedback from market participants includes: "*Products are usually formulated for use in selected species, based on active ingredients, galenic form and indications. They also are registered specifically for these species. Vets are also specialized by species (even for primary care) and this has an influence obviously on vet clinic organization, that tend to be also specialized by species due to equipment needed.*", "*a huge difference / mainly because of the size of the animals / more often pharmaceuticals for horses and cows are injectable / cows use a lot of medication in the udder*" and "*There are quite a bit of differences due to the different species treated in them. Equipment, dimensions, etc*".[30]

(33) Accordingly, there are strong indications showing that the market for veterinary services should be further segmented per type of clinic and type of animal group treated. Nonetheless, for the purposes of this decision, the Commission leaves the market definition open as the Transaction does not lead to serious doubts under any plausible market definitions.

5.2.2. Geographic market definition

5.2.2.1. The Commission's previous decisions

(34) The Commission has not in the past assessed the geographic delineation of the market for the provision of veterinary clinics. In a previous case, while not

[28] Response to Q2 - Questionnaire to veterinary clinics, Question D.A.6.

[29] Response to Q2 - Questionnaire to veterinary clinics, Question D.A.6.

[30] Response to Q1 - Questionnaire to veterinary pharmaceuticals, Question D.A.3.; Response to Q2 - Questionnaire to veterinary clinics, Question D.A.7.; Response to Q3 - Questionnaire to distributors, Question D.A.1.

defining such a market, the Commission recognised that the retail of dietetic pet food via the veterinary channel could be national in scope or even local.[31]

5.2.2.2. The Notifying Party's view

(35) The Notifying Party does not contest that the geographic scope for the provision of veterinary services could be defined as local if the closeness of competition between providers of veterinary services were to be examined. It, however, notes that for the purposes of the Transaction, its effects should be assessed at a national level for veterinary services. This is because the Transaction gives rise to a vertical link between Dechra and IVCE, where the former predominantly distributes its pharmaceuticals through national wholesalers. The Notifying Party therefore does not believe it is appropriate to assess the Transaction based on a narrower geographic delineation.

5.2.2.3. The Commission's assessment

(36) The market investigation suggests that the provision of veterinary services could be either national in scope or local, depending on the type of clinic. As regards primary care clinics, most respondents to the market investigation considered that an animal owner would be willing to travel a distance of maximum 20km.[32] As regards referral clinics, nearly all of the respondents consider that animal owners would travel at least around 50km to a referral clinics, with most of them suggesting that animal owners would travel above 200km. [33] Some market participants explain for example: *"For more advanced procedures carried out in referral clinics, […], customers might travel across all of Finland for one specific clinic"*[34], and *"when a referral takes places, the pet owners are willing to travel very far to see the specialist (this could include long distances by car, and even taking flights)"*[35].

(37) Given that the Transaction gives rise to vertical links only, and that the procurement of animal pharmaceuticals is in general managed by distributors and clinics on a national basis. This is supported by the fact that a majority of respondents to the market investigation considered that clinics generally have a purchasing strategy at national level, and even, bigger chains tend to have a multi-national / EEA-wide purchasing strategy with national components.[36] Therefore, Dechra, or any animal pharmaceutical company, when dealing with veterinary clinics in a specific country, would typically negotiate the agreement with a centralised (at least) national procurement function of a specific clinic or groups of

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31 M. 9019, Mars/Anicura, paragraph 50. The Commission stated that: "The market investigation in the present case confirms that the retail of dietetic pet food via the veterinary channel is local in geographic scope, given that: (i) veterinary clinics tend to attract customers from their vicinity, and (ii) the majority of respondent market participants indicated that the maximum distance travelled by pet owners to veterinary clinics is less than 90 km". However, given that in that case, AniCura and its subsidiary VetFamily were present across the territory of Denmark and Sweden, the Commission assessed the transaction having regard to the entirety of the territories of the countries concerned (i.e. national) (M.9019 Mars / Anicura, para. 52).

32 Responses to Q2 - Questionnaire to veterinary clinics, Question D.B.1.

33 Responses to Q2 - Questionnaire to veterinary clinics, Question D.B.1.

34 Call with a market participant, dated 4 September 2023.

35 Call with a market participant, dated 22 September 2023.

36 Response to Q1 - Questionnaire to veterinary pharmaceuticals, Question D.B.1 and D.B.2.; Response to Q2 - Questionnaire to veterinary clinics, Question D.B.2. and D.B.3; Response to Q3 - Questionnaire to distributors, Question D.B.1. and D.B.2.

clinics. Therefore, any attempt of foreclosure strategy of the Merged Entity, i.e. preventing or worsening access to Dechra's pharmaceuticals, would have to be conducted on a national level. As a result, for the purposes of the vertical assessment in this case, the Commission considers it appropriate to carry out its assessment at a national level.

6. COMPETITIVE ASSESSMENT

6.1. Legal framework for competitive assessment of vertical mergers

(38) Vertical mergers involve companies operating at different levels of the same supply chain. Pursuant to the Commission Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Non-Horizontal Merger Guidelines")[37], vertical mergers do not entail the loss of direct competition between merging firms in the same relevant market and provide scope for efficiencies.

(39) However, there are circumstances in which vertical mergers may significantly impede effective competition. This is in particular the case if they give rise to foreclosure.[38]

(40) The Non-Horizontal Merger Guidelines distinguish between two forms of foreclosure: input foreclosure, where the merger is likely to raise costs of downstream rivals by restricting their access to an important input, and customer foreclosure, where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base.[39]

(41) Pursuant to the Non-Horizontal Merger Guidelines, input foreclosure arises where, post-merger, the new entity would be likely to restrict access to its actual or potential rival in the downstream market to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.[40]

(42) For input foreclosure to be a concern, the merged entity should have a significant degree of market power in the upstream market. Only when the merged entity has such a significant degree of market power, can it be expected that it will significantly influence the conditions of competition in the upstream market and thus, possibly, the prices and supply conditions in the downstream market.[41]

(43) Pursuant to the Non-Horizontal Merger Guidelines, customer foreclosure may occur when a supplier integrates with an important customer in the downstream market and because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete which in turn, may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This

37 OJ C 265, 18.10.2008, p. 6.
38 Non-Horizontal Merger Guidelines, paragraph 18.
39 Non-Horizontal Merger Guidelines, paragraph 30.
40 Non-Horizontal Merger Guidelines, paragraph 31.
41 Non-Horizontal Merger Guidelines, paragraph 35.

may allow the merged entity profitably to establish higher prices on the downstream market.[42]

(44) For customer foreclosure to be a concern, a vertical merger must involve a company which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.[43]

6.2. The Parties' activities for the assessment

(45) The vertical link that gives rise to affected market concerns the manufacture of animal pharmaceuticals (upstream) and the provision of veterinary services (downstream).

(46) As regards the upstream level, Table 1 below provides an overview of Dechra's market shares in the upstream markets for animal pharmaceuticals by therapeutic area and animal group. The table is limited to those therapeutic areas where Dechra's market share exceeds 30% in any of the listed countries. Although therapeutic areas by animal group do not constitute relevant markets as such as explained in Section 5.1.1.3, they provide a useful first indication of the areas where Dechra is strong and the indications that its flagship products are likely to treat.

Table 1: Summary of Dechra's market shares in the affected markets, 2022

Country	Dechra's share in animal pharmaceuticals (in value, %)									
	CA									FA
	Anaesthesia & Analgesia	Anti-infectives	Cardiorenal	Endocrinology	Gastro-intestinal	Neurological	Ophthalmological	Orthopaedics	Otitis	Anti-infectives
Belgium	[10-20]	[10-20]	[10-20]	[30-40]	[20-30]	[30-40]	[5-10]	[80-90]	[10-20]	[30-40]
Estonia	<30	<30	<30	[35-50]	<30	<30	<30	<30	<30	<30
Finland	[5-10]	[20-30]	[10-20]	[40-50]	[20-30]	[20-30]	[20-30]	[50-60]	[30-40]	[0-5]
France	[10-20]	[10-20]	[10-20]	[30-40]	[30-40]	[10-20]	[5-10]	[10-20]	[10-20]	[5-10]
Germany	[5-10]	[20-30]	[10-20]	[40-50]	[30-40]	[20-30]	[5-10]	[50-60]	[20-30]	[40-50]
Ireland	[10-20]	[0-5]	[30-40]	[30-40]	[10-20]	[40-50]	[50-60]	[40-50]	[20-30]	[5-10]
The Netherlands	[30-40]	[50-60]	[20-30]	[50-60]	[30-40]	[30-40]	[40-50]	[5-10]	[30-40]	[20-30]
Norway	[5-10]	[0-5]	[10-20]	[50-60]	[40-50]	[40-50]	[40-50]	[20-30]	[30-40]	[0-5]
Spain	[10-20]	[10-20]	[10-20]	[50-60]	[40-50]	[10-20]	[30-40]	N/A	[10-20]	N/A
Sweden	[10-20]	[0-5]	[5-10]	[40-50]	[30-40]	[20-30]	[90-100]	[30-40]	[30-40]	[0-5]

42 Non-Horizontal Merger Guidelines, paragraph 58.

43 Non-Horizontal Merger Guidelines, paragraph 61.

Country	Dechra's share in animal pharmaceuticals (in value, %)									
	CA									FA
	Anaesthesia & Analgesia	Anti-infectives	Cardiorenal	Endocrinology	Gastro-intestinal	Neurological	Ophthalmological	Orthopaedics	Otitis	Anti-infectives
Austria	<30			[35-50]	<30					
Denmark										
Latvia				< 30						
Poland				[35-50]						
Portugal										

Source: Form CO, Table 15 and Annex 7.

(47) Within each therapeutic area, Table 2 below provides an overview of Dechra's strong products in the upstream markets for animal pharmaceuticals. Specifically, the table provides an overview of all products for specific indications, where Dechra's market position would be perceived as strong or market leading (**"strong products"**) across the EEA countries. The list, which was prepared by the Notifying Party and submitted to respondents during the market investigation, includes 23 products across 7 therapeutic areas.

(48) The list of products includes strong products identified by the Parties (Form CO, Annex 4.3) and one additional product identified as strong or unique by market participants in responses to the market investigation questionnaires. Among Dechra's strong products, several products were identified as unique (that is to say without alternatives). These unique products are Cosacthen, Fentadon, Myrataz*, Vetoryl, and Zycortal. In addition, a number of respondents to the market investigation indicated HyperCard (used for the treatment of feline primary hypertrophic cardiomyopathy) as a strong product. However, according to the Notifying Party, this product has not been supplied in the EEA since 2018 and […].[44]

Table 2: Overview of Dechra's strong products in the EEA

Therapeutic area	Product (Therapeutic area)	Indication
Endocrinology	*Vetoryl*	For the treatment of pituitary-dependent and adrenal-dependent hyperadrenocorticism (Cushing's syndrom) in dogs.
	Felimazole	For the treatment of hyperthyroidism in cats.
	Forthyron	For the treatment of hypothyroidism (an abnormality of the thyroid gland leading to a reduction in the dog's metabolic state) in dogs.
	Cosacthen	For the evaluation of adrenocortical function in dogs.
	Zycortal	Replacement therapy for mineralocorticoid deficiency in dogs with primary hypoadrenocorticism (Addison's disease).
Dermatology	*Isaderm*	For the topical treatment of surface pyoderma in the dog such as acute moist dermatitis ('hot spots') and intertrigo (skin fold dermatitis).

44 The Notifying Parties' response to RFI 9, submitted on 7 December 2023.

* Should read: 'Mirataz'.

	Malaseb	For the treatment and control of seborrhoeic dermatitis associated with Malassezia pachydermatis and Staphylococcus intermedius in dogs and as an aid in the treatment of ringworm due to Microsporum canis in conjunction with griseofulvin ringworm in cats.
	Redonyl	For support of healthy skin function in dogs.
Anasthesia & Analgesia	*Sedator*	For the restraint, sedation and analgesia in dogs and cats.
	Tralieve	For the reduction of acute and chronic mild soft tissue and musculoskeletal pain in dogs.
	Comfortan	For the analgesia in dogs & cats (premedication for general anaesthesia or neuroleptanalgesia).
	Equipalazone	For the treatment of musculoskeletal disorders in horses and ponies where the anti-inflammatory and analgesic properties of phenylbutazone can offer relief.
	Atipam	For the reversal of the sedative effects of dexmedetomidine hydrochloride and medetomidine hydrochloride in cats and dogs.
	Domidine	For the treatment of inflammatory or allergic conditions in horses, cattle, pigs, dogs, and cats.
	Fentadon	For intra-operative analgesia during surgical procedures such as soft tissue and orthopaedic surgery, and for the control of post-operative pain associated with surgery.
	Equisolon	For alleviation of inflammatory and clinical parameters associated with recurrent airway obstruction (RAO) in horses, in combination with environmental control.
Anti-infectives	*Soludox*	For reduction of mortality, clinical signs and reduce lesions caused by bacterial respiratory disease in poultry and treatment of clinical signs associated with respiratory disease in swine.
	Equibactin	For the treatment of infections in horses caused by micro-organisms susceptible to the combination of trimethoprim and sulfadiazine.
Gastro-intestinal	*Prevomax*	For the treatment of nausea and vomiting (e.g., due to chemotherapy, motion sickness, recovery from general anaesthesia) in dogs and cats.
	Mirataz	For the treatment of body weight gain in cats experiencing poor appetite and weight loss resulting from chronic medical conditions.
Neurological	*Libromide*	For the treatment of refractory cases of epilepsy in dogs.
Orthopaedics	*Osphos*	For the treatment of clinical forelimb lameness associated with the bone resorptive processes of the navicular bone in adult horses.
	Tensolvet	For the treatment of local inflammatory swellings and bruises and other acute, inflammatory conditions of the musculoskeletal system in horses. Tensolvet also promotes the early reabsorption of haematoma and oedematous swelling resulting from such conditions.

(49) At the downstream level, EQT's IVCE company is active in the provision of veterinary services across several EEA Member States as shown in Table 3 below. IVCE owns both primary care clinics and referral clinics / animal hospitals, for all types of animal groups (mostly for CA). The Notifying Party has submitted that there is no clear distinction between animal hospitals, referral clinics and primary care clinics and that neither IVCE nor the Notifying Party hold information on or are aware of any source that provides estimates, by any metric, regarding such a hypothetical

segmentation. They have nevertheless provided their best estimates, based on IVCE's industry knowledge which show that these shares would not materially differ should the markets for veterinary services be further segmented.[45] On that basis, the Commission considers that its competitive assessment would not materially differ.

Table 3: Summary of the IVCE's market shares in the affected markets, 2022

Country	IVCE's share in veterinary services (in %)		
	# Veterinary clinics	# Veterinarians	Value
Austria	[0-5]	<10	[0-5]
Belgium	[0-5]	[0-5]	[5-10]
Denmark	[0-5]	<10	[0-5]
Estonia	[0-5]	<10	[20-30]
Finland	[0-5]	[10-20]	[30-40]
France	[0-5]	[0-5]	[5-10]
Germany	[0-5]	[0-5]	[0-5]
Ireland	[5-10]	[5-10]	[10-20]
Latvia	[0-5]	<10	[0-5]
The Netherlands	[20-30]	[20-30]	[20-30]
Norway	[5-10]	[0-5]	[10-20]
Poland	[0-5]	<10	[0-5]
Portugal	[0-5]	<10	[0-5]
Spain	[0-5]	[0-5]	[0-5]
Sweden	[5-10]	[10-20]	[20-30]

Source: Form CO, Table 15 and Annex 7.1.

6.3. Input foreclosure

(50) Input foreclosure relates to the risk that post-Transaction, IVCE's competitors would not have access to Dechra's pharmaceutical products or would face worse commercial conditions (e.g. higher prices) than IVCE.

6.3.1. The Notifying Party's view

6.3.1.1. Ability to foreclose

(51) The Notifying Party argues that the Merged Entity will not have the ability to foreclose competitors for several reasons.[46]

(52) First, the distribution model for animal pharmaceuticals is characterised by its dependency on wholesalers. Dechra cannot therefore control the redistribution of its products or prevent some of its products from being supplied to competing veterinary clinics.

(53) Second, the "Big 4" players Zoetis, Bayer Elanco, Boehringer Ingelheim and MSD Animal Health, each of which is significantly larger than Dechra, and other competitors (e.g., Ceva, CP Pharma, Norbrook, Virbac and Richter) offer alternatives to Dechra's products.

(54) Third, Dechra's products are not vital for the practice of a veterinary clinic as evidenced by the low proportion of IVCE's purchases of Dechra's products.

45 The Notifying Parties' response to RFI 9, submitted on 7 December 2023.

46 Form CO, paragraphs 513 and following.

Namely, IVCE's purchases of Dechra's animal pharmaceuticals accounted for […]% of IVCE's total spend on animal pharmaceuticals, in the EEA countries that the Notifying Party identified as affected.

(55) Lastly, the Notifying Party explained that for those products it labelled as unique (as referred to in paragraph 48 above), there are nevertheless several alternatives:

- *As regards Cosacthen*, a synthetic adrenocorticotropic hormone ("ACTH") which is used to diagnose Cushing's syndrome and Addison's disease, veterinarians can rely on three main options: (i)an ACTH stimulation tests, (ii) low dose dexamethasone suppression tests ("LDDST") and (iii) the urine corticoid:creatinine ratio ("UCCR"). A combination can also be used. Of these, only the ACTH stimulation tests require an injection of synthetic ACTH, with Cosacthen being the only veterinary licensed preparation of this. However, there are other preparations of synthetic ACTH available on the market, in particular for use in humans, and these can be (and are) used instead of Cosacthen. Synacthen is an example of this but is not the only human preparation available. For Addison's disease, while LDDST and UCCR are not appropriate diagnosis options, there are alternatives to Cosacthen, such as Synacthen, which can (and are) used to carry out ACTH stimulation tests.[47]

- *As regards Fentadon*, animal pharmaceuticals used within anesthesia and analgesia are somewhat interchangeable and alternative pain relief can also be used. Veterinarians may also use the human equivalent (Fentanyl) under certain circumstances.

- *As regards Miratax*, a generic version EluraCat (Elanco) has been registered in several EEA countries that could serve as an alternative.

- *As regards Vetoryl*, a generic version Trilotab (CP Pharma) has been registered in several EEA countries that could serve as an alternative.

- *As regards Zycortal*, there could be two alternatives, i.e. Elanco's product Percorten-V (approved in the US) and Florinef (Bristol-Myers-Squibb) used off-label.

6.3.1.2. Incentive to foreclose

(56) The Notifying Party argues that IVCE only accounts for a small proportion ([…]%, in the EEA countries that the Notifying Party identified as affected) of Dechra's sales to veterinary businesses in the geographic markets it identified as being affected. This means that if Dechra were able to cease its supply to IVCE's rivals, it would forego more than […]% of its sales.[48]

6.3.1.3. Impact of foreclosure

(57) The Notifying Party argues that the Transaction would not give rise to any anti-competitive effects on the downstream level. This would primarily be due to the

47 The Notifying Parties' response to Question 2 of RFI 9, submitted on 7 December 2023.

48 Form CO, paragraphs 539 and following.

fact that the "unique" Dechra products that could be used for a hypothetical input foreclosure strategy are rarely used by veterinary clinics, as evidenced by (i) low prevalence rates (less than 1%) of the diseases they treat (Vetoryl and Zycortal) and (ii) Dechra's limited sales, both in terms of value and volume (Mirataz and Fentadon). Hence, even if rival veterinary clinics were not able to access these products (a scenario that could never materialize due to the presence of independent wholesalers) or get access to them on less favourable terms, there would be no negative impact on their overall business activities or ability to compete.[49]

6.3.2. The Commission's assessment

6.3.2.1. General considerations

(58) First, the Commission agrees with the Notifying Party that total input foreclosure would be limited due to the presence of distributors as intermediaries between the manufacturer and the veterinarian[50]. The market participants confirmed that in cases where a manufacturer relies on a third-party distributor, the manufacturer cannot control which veterinary clinics have access to its products. There are only two affected EEA countries, where Dechra has sales via direct channels, Germany and the Netherlands. The assessment of the Commission will therefore focus on risks of partial,[51] price-based input foreclosure through, in particular, decrease of rebates, and the same considerations will apply to total foreclosure for Germany and the Netherlands.

(59) Second, as mentioned above, the different therapeutic areas in the affected markets constitute a starting point of the assessment. The Commission notes that Dechra has a significant position in these therapeutic areas mostly due to the strong products (as listed further above) in each area. As recognized by the Non-Horizontal Merger Guidelines,[52] for input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market. With respect to the rest of Dechra's products available in the EEA but not listed in Table 2, Dechra could not be considered to have a strong or market leading position and therefore does not have a significant degree of market power with respect to these. This is because several potentially stronger alternatives exist for those products and will continue to be available to the Merged Entity's downstream competitors post-Transaction. The respondents to the market investigation by and large confirmed that the list of strong and unique products provided by the Notifying Party is accurate, with only a few identifying additional products that could be considered unique, some of which have consequentially been added to the assessment.[53] The remainder of the assessment therefore focuses on Dechra's strong products only.

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49 Form CO, paragraph 556.

50 Total foreclosure refers to the possibility that post-Transaction the Merged Entity would entirely restrict IVCE's competitors' access to Dechra's animal pharmaceuticals. See Non-Horizontal Merger Guidelines, paragraph 33.

51 Partial foreclosure refers to more subtle forms of foreclosure, such as for example the possibility that post-Transaction the Merged Entity would provide lower rebates (higher prices) to IVCE's competitors as compared to IVCE. See Non-Horizontal Merger Guidelines, paragraph 33.

52 Non-Horizontal Merger Guidelines, paragraph 35.

53 Responses to Q1 – Questionnaire to veterinary pharmaceuticals, Question E.2; Q2 – Questionnaire to veterinary clinics, Question E.9; Q3 – Questionnaire to distributors, Question E.2 The three other additional products identified during the market investigation included Cosachten* (see Table 4),

(60) With respect to the 23 products listed in Table 2, for 18 of those products, the market investigation has shown that alternative products are available across the EEA. Despite these 18 products being considered among Dechra's strong products, Dechra could not be considered to hold a sufficient degree of market power in the upstream market to raise serious doubts due to input foreclosure, for the following reasons.

- For all these 18 products, a sufficient number of alternative products will remain available to IVCE's competitors post-Transaction in the EEA. Out of 18 strong products (i.e. excluding the five unique products), for 9 of them there are at least 3 alternative products, for 4 at least 2 alternative products and for 5 at least one established alternative product in the EEA.[54] This is confirmed by the market investigation, as for each of these products the respondents identified some alternatives.[55]
- This is further confirmed by the majority of the veterinary clinics expressing the view that in case these products would only be available to them at significantly worsened competition conditions, they would lose very little or none of the patients currently using the products.[56]
- The market investigation also confirmed that these products are not considered as very important for clinics to be able to provide an overall competitive offering. In particular, when asked to assess the importance of the products on a scale from 1 to 5 (1 meaning low importance and 5 high importance), the majority of responding veterinary clinics have rated these products with a score of 3 or below.[57]
- The above could reflect the fact that the listed products account for a very small proportion of the veterinary clinics' patients and revenues. For most of these products, the veterinary clinics indicate that they are used by less than 5%, and oftentimes represent less than 1%, of their total patient base and their total revenues.[58]
- Overall, the Commission's investigation found that for the 18 above-discussed strong products, Dechra does not hold a sufficient degree of market power for input foreclosure to raise serious doubts. In particular, a sufficient number of available alternatives are and will remain available to clinics competing with IVCE post-Transaction, and the Merged Entity therefore would not have the ability to engage in any input foreclosure.

Felimazole (see Table 2), and HyperCard (however, this appears to be based on outdated information as HyperCard has been discontinued in 2018, see paragraph 48).

* Should read: "Cosacthen". This applies to all other instances where this product name is misspelled in this decision'.

54 Form CO, Annex 3.4, noting however that some of these alternatives are not always available in all countries where Dechra and IVCE are active. Those are discussed further below.

55 Responses to Q1 – Questionnaire to veterinary pharmaceuticals, Question E.2; Q2 – Questionnaire to veterinary clinics, Question E.9.

56 Responses to Q2 - Questionnaire to veterinary clinics, Question E.4.

57 Responses to Q2 - Questionnaire to veterinary clinics, Question E.4. One exception is Forthyron, for which the respondents are split between a 3 or below rating, or a higher rating. In addition, Felimazole was not covered by the question.

58 Responses to Q2 - Questionnaire to veterinary clinics, Question E.4. The exceptions are Malaseb, Isaderm and Prevomax, where the majority of responding clinics indicate that the product is used by 6-10% of the patients.

(61) Strong products, which cannot be considered unique, will therefore not be further discussed in this decision. However, some of these 18 strong products, which are not considered unique at the EEA-level, may be considered unique at national levels. Those will be discussed in the country-specific assessments below.[59]

(62) Table 4 provides an overview of the remaining five products Dechra has, which could be considered to be unique in all EEA countries where they are available, because there are none or very limited alternatives. The Commission has carried out a more detailed assessment of these products, which are discussed in turn below. The Commission has carried out this assessment for the whole of the EEA, while taking into account any important differences between the Member States, as for these products conditions of competition and feedback from respondents to the market investigation did not differ across EEA Member States.

Table 4: Overview of Dechra's unique products, EEA

Product	Therapeutic area	Indication
Cosacthen	Endocrinology	An injection used to carry out adrenocorticotropic hormone ("ACTH") stimulation tests. These tests are used for the diagnosis of Cushing's disease or Addison's disease in dogs.
Vetoryl	Endocrinology	For the treatment of pituitary-dependent and adrenal-dependent hyperadrenocorticism (Cushing's syndrom) in dogs. The incidence rate of the Cushing's syndrom in dogs is 0.4%.
Zycortal	Endocrinology	Replacement therapy for mineralocorticoid deficiency in dogs with primary hypoadrenocorticism (Addison's disease). The incidence rate of the Addison's disease in dogs is 0.38%.
Mirataz	Gastro-intestinal	For the treatment of body weight gain in cats experiencing poor appetite and weight loss resulting from chronic medical conditions.
Fentadon	Anaesthesia & Analgesia	For intra-operative analgesia during surgical procedures such as soft tissue and orthopaedic surgery, and for the control of post-operative pain associated with surgery.

(63) All of the five unique products are products for cats or dogs, and therefore used only by the veterinary clinics for companion animals. The plausible affected downstream markets therefore include veterinary clinics overall, veterinary clinics for companion animals, primary clinics for companion animals, and referral clinics for companion animals, across all countries where both Dechra and IVCE are active. As explained in the following sections, the assessment would in most part not change materially depending on the relevant downstream market considered.

6.3.2.2. Ability to foreclose – Dechra's unique products in the EEA

(64) The Merged Entity's ability to foreclose for the five unique products is discussed in turn:

(65) *With respect to Cosacthen,* which was flagged by some respondents to the market investigation as a unique product, the Commission's assessment shows that some alternatives appear to be available to the veterinary clinics. For diagnosing of Cushing's syndrome in dogs, the Notifying Party explained that there are three different types of tests available. In addition to the ACTH test (for which

[59] Those are Equibactin in Austria; Equibactin, Osphos and Tensolvet in Belgium; Forthyron, Libromide and Osphos in Denmark; Forthyron and Libromide in Finland; Libromide and Osphos in Ireland; Equibactin in the Netherlands; Forthyron in Norway; Equisolon, Isaderm, and Osphos in Poland; Equipalazone, Equisolon, Equibactin, Osphos in Portugal; Equibactin and Equisolon in Spain; and Libromide and Osphos in Sweden.

Cosacthen is used), there exists a low dose dexamethasone suppression test ("LDDST") and a urine corticoid:creatinine ratio test ("UCCR"). The Commission notes that the number of IVCE's patients using Cosacthen (used to diagnose Cushing's syndrome) is significantly lower than the number of patients receiving Vetoryl (used for the treatment of Cushing's syndrome) in the EEA,[60] suggesting that other tests are indeed also being used. With respect to using Cosacthen for diagnosing Addison's disease, the ACTH test is the predominant available test. However, the Notifying Party has explained that other preparations of synthetic ACTH intended for human use are available on the market, and these can be (and are) used instead of Cosacthen.[61]

(66) *With respect to Fentadon,* the Merged Entity's ability to engage in input foreclosure appears limited. Fentadon is used for analgesia during surgical procedures and it can also be used for the control of post-operative pain. Even though it is a unique molecule (fentanyl), the market investigation confirmed the Notifying Party's view that other types (or combinations) of anaesthetics offer a suitable alternative to Fentadon. Specifically, the majority of veterinary pharmaceutical manufacturers and veterinary clinics agree with this statement,[62] and one clinic explains for example: *"Other pharmaceuticals with the same therapeutic indication may be used as an alternative to Fentadon for the purposes of anaesthetics."* Further, when asked to assess the importance of the products on a scale from 1 to 5 (1 meaning low importance and 5 high importance), the majority of responding veterinary clinics have rated Fentadon with a score of 3 or below.[63]

(67) *With respect to Mirataz,* the Commission cannot exclude that the Merged Entity has the ability to engage in input foreclosure. In particular, the market investigation confirmed that Mirataz is a unique product, which is important for the veterinary clinics and for which no equivalent alternatives exist. Specifically, the majority of responding veterinary clinics rate the importance of Mirataz for their clinics with a score of 5 (5 meaning high importance),[64] with no clinics or veterinary pharmaceutical manufacturers being able to identify alternatives.[65] Moreover, the market investigation did not confirm the Notifying Party's view that a generic version of Mirataz would likely become available shortly across the EEA countries.[66] Instead, the market participants have pointed out that the potential alternative identified by the Notifying Party, EluraCat by Elanco does not have the same active ingredient as Mirataz, that the market may not be big enough for

60 The Notifying Party's response to RFI 8, submitted on 5 December 2023, Annex RFI 4.3. Specifically, in the EEA in 2022, IVCE's clinics are estimated to having treated over 4 600 patients with Vetoryl, and only 646 using Cosachten.

61 Reply to RFI n°9 of 7 December 2023, paragraphs 2.1 to 2.9. For example in Germany where the use the use of human pharmaceuticals for animals, i.e., "off label", is typically reported, it appears that Synachten is also used for animals. However, outside of Germany the same approach is not taken (whether in relation to Synacthen or other human pharmaceuticals) meaning such "off label" use would not necessarily show in the data.

62 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question E.6; Q2 - Questionnaire to veterinary clinics, Question E.13.

63 Responses to Q2 - Questionnaire to veterinary clinics, Question E.4.

64 Responses to Q2 - Questionnaire to veterinary clinics, Question E.4.

65 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question E.2, Responses to Q2 - Questionnaire to veterinary clinics, Question E.9.

66 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question E.4, Responses to Q2 - Questionnaire to veterinary clinics, Question E.11.

generic products to be developed, and even if they are developed, it is uncertain whether they would become available in all EEA countries.[67]

(68) *With respect to Vetoryl*, the Commission cannot exclude that the Merged Entity has the ability to engage in input foreclosure. In particular, the market investigation confirmed that Vetoryl is a unique product, which is important for the veterinary clinics and for which no equivalent alternatives exist. Specifically, the majority of responding veterinary clinics rate the importance of Vetoryl for their clinics with a score of 5 (5 meaning high importance),[68] with no clinics or veterinary pharmaceutical manufacturers being able to identify alternatives.[69] Instead, veterinary clinics confirm that: *"it's the only medical treatment for Cushing's disease."*[70] Moreover, the market investigation did not confirm the Notifying Party's view that Trilotap[*], a generic version of Vetoryl, would likely become available across the EEA countries shortly.[71] Instead the market participants have pointed out the uncertainty of the launch, and note that often even if products are available in the EEA, they do not become available in all EEA countries.[72]

(69) *With respect to Zycortal*, the Commission cannot exclude that the Merged Entity has the ability to engage in input foreclosure. In particular, the market investigation confirmed that Zycortal is a unique product, which is important for the veterinary clinics and for which no equivalent alternatives exist. Specifically, the majority of responding veterinary clinics rate the importance of Zycortal for their clinics with a score of 5 (5 meaning high importance),[73] with no clinics or veterinary pharmaceutical manufacturers being able to identify alternatives.[74] In addition, the market investigation does not confirm the Notifying Party's views about the available alternatives. First, with respect to Percorten-V (Elanco's product registered in the US), the majority of respondents do not consider that Percorten-V is likely to become available in the EEA countries shortly.[75] Second, with respect to the off-label use of Florinef (Bristol-Myers Squibb), a molecule used in human medicine, the majority of respondents do not consider it a suitable alternative, a number of them mentioning that the relevant legislation would in general prevent them from using products off label in case that an official product is available in the market.[76]

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67 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question E.4, Responses to Q2 - Questionnaire to veterinary clinics, Question E.11.

68 Responses to Q2 - Questionnaire to veterinary clinics, Question E.4.

69 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question E.2, Responses to Q2 - Questionnaire to veterinary clinics, Question E.9.

70 Responses to Q2 - Questionnaire to veterinary clinics, Question E.4.

71 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question E.4, Responses to Q2 - Questionnaire to veterinary clinics, Question E.11.

72 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question E.4, Responses to Q2 - Questionnaire to veterinary clinics, Question E.11.

73 Responses to Q2 - Questionnaire to veterinary clinics, Question E.4.

74 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question E.2, Responses to Q2 - Questionnaire to veterinary clinics, Question E.9.

75 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question E.5, Responses to Q2 - Questionnaire to veterinary clinics, Question E.12.

76 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question E.5, Responses to Q2 - Questionnaire to veterinary clinics, Question E.12. "Off label" is a generic term for use of a medicine for an unapproved indication or in an unapproved age group, dosage, or route of administration.

* Should read: 'Trilotab'.

** Should read: 'Vetoryl'.

(70) In sum, the Commission finds that in respect to Cosachten and Fentadon, the Merged Entity is unlikely to have the ability to engage in input foreclosure, whereas regarding Mirataz, Vetory** and Zycortal, this cannot be excluded.

6.3.2.3. Incentive to foreclose – Dechra's unique products in the EEA

(71) As mentioned, for most of Dechra's products which are not considered as unique, alternative products are available that competitors' clinics could switch to in case of an input foreclosure attempt. Any switching of clients (animal owners) from rival clinics to IVCE clinics and thus gains from such switching would be limited and therefore, incentives to foreclose are unlikely to exist. This was confirmed in the market investigation, as the majority of the veterinary clinics confirmed that in case of foreclosure of Dechra's strong products (excluding unique products), they likely would not lose or would lose only a limited portion of the patients using such products.[77]

(72) As regards the unique products, in most of the affected EEA countries, the Merged Entity's incentives to engage in input foreclose would be limited due to IVCE's moderate market share in the downstream market for veterinary clinics (and its potential segments). In all EEA countries (save for the Netherlands), market shares would be below 10% in number of vets and number of clinics, In 9 out of 15 affected EEA countriesIVCE's shares remain below 10% (see Table 3 above) in value.) In the light of these elements, the Merged Entity would be unlikely to significantly benefit from a foreclosure strategy, since it would not be able to capture most of the diverted sales.

(73) Looking more closely at the Merged Entity's incentives to engage in foreclosure of the unique products, the profitability of such a foreclosure strategy might differ depending on the individual products,

(74) *With respect to Cosacthen*, as sales in the EEA are very limited (less than EUR […] annually),[78] the Merged Entity would have no incentives to engage in input foreclosure regarding Cosacthen as it would not be a profitable strategy for such a limited value of sales.

(75) *With respect to Fentadon*, the Merged Entity is unlikely to have an incentive to foreclose competing veterinary clinics. First, as mentioned above, the market investigation confirmed the Notifying Party's view that other types (or combinations) of anaesthetics offer a suitable alternative to Fentadon. Second, the market investigation confirmed that competing clinics would potentially lose only less than 10% of patients if they had no further access to Fentadon.[79] As a result, the Merged Entity is unlikely to benefit from any gains from such a foreclosure strategy and unlikely to find it profitable.

(76) *With respect to Mirataz*, the Merged Entity is unlikely to have an incentive to engage in input foreclosure. Based on the market investigation, only very few patients (less than 5%) would potentially switch veterinary clinics should their

77 Responses to Q2 - Questionnaire to veterinary clinics, Question E.11.
78 The Notifying Party's response to RFI 8, submitted on 5 December 2023, Annex RFI 4.3.
79 Responses to Q2 - Questionnaire to veterinary clinics, Question E.4.

own clinic not offer Mirataz anymore.[80] This means that the Merged Entity is unlikely to benefit from this strategy and find it profitable.

(77) *With respect to Vetoryl,* the Merged Entity is unlikely to find it profitable to engage in input foreclosure. The Commission draws its conclusion from the level of profit that would be at stake upstream should Dechra engage in input foreclosure compared to the level of profit earned by IVCE downstream with Vetoryl. In all affected EEA countries, the profits earned by Dechra upstream (EUR […] million in 2022 in all EEA countries) significantly exceed the profits earned by IVCE downstream from patients using Vetoryl (EUR […] in 2022 in all EEA countries). The high profits currently earned by Dechra upstream would make the potential losses of a foreclosure strategy extremely high, which the Merged Entity would unlikely be able to recuperate downstream.[81]

(78) *With respect to Zycortal,* the Commission cannot exclude the existence of an incentive to foreclose. Clinics generally said that they would lose patients, with more than half considering that they would lose a majority of their patients if they could not offer Zycortal anymore.[82] In addition, […].

(79) However, the market investigation confirmed the Notifying Party's argument that foreclosure of individual products would likely have a negative impact on sales of the whole of Dechra's portfolio. Specifically, most of responding veterinary clinics indicated that in case of a foreclosure attempt, they would reduce purchases from Dechra's overall portfolio of products.[83] One clinic for example explains:[84] *"Agreements are typically global, so it wouldn't only impact those products that hypothetically increase in price but would affect the entire list of products."* Therefore, the losses even from a targeted foreclosure strategy would potentially be larger and go beyond the foreclosed products only. This would further reduce the Merged Entity's incentives to engage in input foreclosure.

(80) In conclusion, the Commission finds it unlikely that the Merged Entity will have an incentive to foreclose competing clinics that use Cosachten, Vetoryl, Mirataz and Fentadon. However, the Commission cannot entirely exclude such incentives for Zycortal, although an input foreclosure strategy on these products could lead to a reduction of sales of Dechra's overall portfolio products and ultimately be unprofitable.

6.3.2.4. Impact of foreclosure – Dechra's unique products in the EEA

(81) The Commission observes the following with regard to the potential impact of input foreclosure.

(82) First, Dechra's five "unique" products identified above are relatively niche products, which account for a limited proportion of a clinic's total patients and revenues. The vast majority of clinics indicated that Dechra's unique products

80 Responses to Q2 – Questionnaire to veterinary clinics, Question E.4.

81 For a total input foreclosure strategy of Vetoryl to be profitable, between 61 and 91% of competitors' patients using a competing product (depending on the affected EEA country) would need to switch to Vetoryl post-Transaction. Such high switching rates appear unlikely in light of IVCE's moderate downstream market shares.

82 Responses to Q2 - Questionnaire to veterinary clinics, Question E.4.

83 Responses to Q2 - Questionnaire to veterinary clinics, Question E.7.

84 Response to Q2 - Questionnaire to veterinary clinics, Question E.7.

generally account for less than 10% of their patients and revenues, most of them actually even representing less than 1%.[85] This reflects the fact that the diseases treated with these products have low incidence rates. For instance, the incidence rate of the Addison's disease treated by Zycortal is 0.38% and the incidence rate of the Cushings disease treated by Vetoryl is 0.39%.

(83) Second, the proportion of patients and revenue remains low when combining all of Dechra's important products together.[86] Thus, it follows that input foreclosure would appear unlikely to negatively impact the clinics' overall ability to compete and significantly impact competition on the downstream market, as explained by respondents to the market investigation. A clinic having responded in the market investigation summarises this view: *"We would expect selective price increases for unique products, but mostly smaller niche products, therefore we don't expect this to impact us notably."*[87] This would also be true for products for which the Notifying Party's ability and incentive to engage in partial input foreclosure cannot be excluded, such as Zycortal.

(84) Third, the majority of veterinary clinics see the impact of the Transaction as neutral.[88] Although some veterinary clinics voiced some concerns during the market investigation, the concerns were generally not substantiated and mostly related more generally to the recent consolidation in the market for veterinary clinics having occurred in some Member States.

(85) For completeness, this conclusion does not change when considering narrower downstream markets such as primary and referral clinics, as the market investigation confirmed the Notifying Party's claim that generally Dechra's strong and unique products are equally used by both types of clinics. There has not been any type of clinic in the market investigation that has suggested otherwise, and there are no material differences in views as regards the various types of clinics.

6.3.3. Country-specific assessment

(86) At Member State level, the assessment carried out in Section 6.3.2. as regards alternatives for strong products, ability to foreclose, incentive to foreclose and impact of a partial input foreclosure strategy applies *mutatis mutandis*.[89]

(87) However, as mentioned above, there are a few products with alternatives available at EEA level but not in some specific jurisdictions. In other words, apart from the five unique products discussed above, there are further products that are unique in certain jurisdictions. These are:

- Equibactin in Austria

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85 Responses to Q2 - Questionnaire to veterinary clinics, Question E.4.

86 Responses to Q2 - Questionnaire to veterinary clinics, Questions E.14. and E.16. For half of responding clinics, Dechra's products for which no alternatives exist represent less than 5% of their patients, and for more than half they represent less than 5% of their costs for pharmaceuticals. Further, at EEA, the five products combined only represent less […]% of IVCE's patients, and at national level, the proportions of Dechra's unique products vary slightly but always below […]% (except for Poland, where the proportions are higher due to Isaderm – however, as will be explained further below, input foreclosure is unlikely in Poland).

87 Responses to Q2 - Questionnaire to veterinary clinics, Question G.2.

88 Responses to Q2 - Questionnaire to veterinary clinics, Questions G.2. and G.3.

89 For completeness, the Commission notes that Cosachten is not available in Latvia.

- Equibactin, Osphos and Tensolvet in Belgium;
- Forthyron, Libromide and Osphos in Denmark;
- Forthyron and Libromide in Finland;
- Libromide and Osphos in Ireland;
- Equibactin in the Netherlands;
- Forthyron in Norway;
- Equisolon, Isaderm, and Osphos in Poland;
- Equipalazone, Equisolon, Equibactin, Osphos in Portugal;
- Equibactin and Equisolon in Spain;
- Libromide and Osphos in Sweden.

(88) These will be discussed in turn.

6.3.4. The Commission's assessment – Austria

(89) In addition to the five products considered as unique at EEA level, Dechra supplies one product that is unique in Austria, namely, Equibactin.

(90) The Commission notes at the outset that Equibactin is administered for the treatment of infections in horses. The Notifying Party explained that IVCE does not offer equine services in Austria, which is also shown by the fact that it did not achieve any revenues from treatment of animals with Equibactin in Austria.[90]

(91) Against this background, while Equibactin is to be considered as a unique product in Austria, post-Transaction, the Merged Entity would not have any incentive to engage in any input foreclosure because it would not be able to recoup sufficient upstream losses at the downstream level, as it does not provide veterinary services for horses. The Commission therefore does not consider it likely that the Merged Entity would engage in input foreclosure of Equibactin in Austria.

6.3.5. The Commission's assessment - Belgium

(92) In addition to the five products considered as unique at EEA level, Dechra supplies three products that are unique in Belgium, namely, Equibactin, Osphos, and Tensolvet.

(93) *As regards Equibactin*, the market investigation in Belgium provided mixed views as to the importance of Equibactin. The Commission notes however that Belgian clinics indicated that revenues from the Equibactin treatment are limited and they are not likely to lose many patients in case of a foreclosure strategy by the Merged Entity.[91] IVCE's profits (approximately EUR […]) are significantly lower than the profits generated by Dechra upstream (approximately EUR […]) and in any case

90 As shown in the response to RFI 11 and Annex 4.3 submitted on 15 December 2023.

91 Response to Q2 – Questionnaire to veterinary services, Questions E.4.

very small.[92] This shows that Dechra would put at risk higher profits if it were to foreclose competing veterinary clinics without the guarantee of recouping these profits downstream. Further, veterinary clinics in Belgium confirmed that they would lose little or no patients if access to Equibactin were to hypothetically stop.[93]

(94) *As regards Osphos*, the market investigation in Belgium shows that Osphos is not considered as an important product. Market participants further indicated that a small proportion of their patients are treated with Osphos. Revenues from the treatment with Osphos are also limited.[94] This is in line with the Notifying Party's submission that shows only approximately […] patients rely on this medicine in Belgium.[95] IVCE only generated EUR […] in profits in 2022 compared to Dechra's higher profits in 2022 (approximately EUR […]).[96] The market investigation also confirmed that clinics in Belgium would lose little or no patients if the Merged Entity engaged in a foreclosure strategy for Osphos.[97]

(95) *As regards Tensolvet*, the Commission notes that it is not an important product for a veterinary clinic. Its lack of importance is reflected in the fact that IVCE […] in Belgium[98], and the market investigation also confirmed its low importance.[99] According to the Notifying Party, […]. Consequently, […]. Further, Dechra only generated approximately EUR […] in profits in 2022, which is immaterial. Veterinary clinics in Belgium confirmed that they would lose little or no patients if access to Tensolvet were to hypothetically stop.[100]

(96) Lastly, as shown above, IVCE's market share downstream is limited in Belgium, where its market share is at most [5-10]% in value for veterinary services.[101]

(97) Against this background, the Merged Entity is unlikely to have the incentive to foreclose downstream competitors. This is because it would unlikely be able to recoup sufficient upstream losses at the downstream level, given IVCE's low sales of these products, limited number of patients treated, and IVCE's limited presence in the country. Furthermore, any foreclosure strategy is unlikely to have an impact on competitors given that they confirmed in the market investigation that they would lose little or no patients if access to the above-mentioned products were to hypothetically stop. The Commission therefore does not consider it likely that the Merged Entity would engage in input foreclosure of Equibactin, Osphos and Tensolvet in Belgium.

92 Annex RFI 4.3. to the Form CO, for the year 2022.
93 Response to Q2 – Questionnaire to veterinary services, Questions E.4.
94 Response to Q2 – Questionnaire to veterinary services, Questions E.4.
95 Please see Annex RFI 4.3 to the Form CO.
96 Annex RFI 4.3. to the Form CO.
97 Response to Q2 – Questionnaire to veterinary services, Questions E.4.
98 Please see Annex RFI 4.3 to the Form CO.
99 Response to Q2 – Questionnaire to veterinary services, Questions E.4.
100 Response to Q2 – Questionnaire to veterinary services, Questions E.4.
101 For completeness, this market share slightly varies if the market is further segmented per type of animal or clinic, but the competitive assessment remains unchanged.

6.3.6. The Commission's assessment – Denmark

(98) In addition to the five products considered as unique at EEA level, Dechra supplies three products that are unique in Demark, namely, Forthyron, Libromide and Osphos.

(99) *As regards Forthyron,* only […] animals received this product from IVCE, showing the limited importance of the product for a veterinary clinic. IVCE only generated in profits approximately EUR […] compared to Dechra's higher profits (approximately EUR […]) for the year 2022. Furthermore, hypothyroidism, for which Forthyron is used, only arises in 0.4% of dogs, hence showing the small number of dogs impacted.[102]

(100) *As regards Libromide,* IVCE made […] for this product, hence showing the limited importance of the product for IVCE.[103] In addition, Dechra's profits in Denmark for this product were low in 2022 (approximately EUR […]). In addition, Libromide is used to treat seizure, which affect 1.1% of dogs, and epilepsy, affecting 0.6% of dogs.[104]

(101) *As regards Osphos,* only […] animals received treatment with this drug from IVCE, amounting to profits of below EUR […] in 2022. These profits are lower than Dechra's profits for the same products, which only amounted to approximately EUR […] for the same year.[105]

(102) In addition to the limited importance of these products, the market investigation did not reveal any concerns of input foreclosure in Denmark.

(103) Against this background, the Merged Entity is unlikely to have the incentive to foreclose IVCE's competitors, which would impact their ability to compete, because it is not likely to recoup the upstream losses with higher prices downstream given its limited sales of each of the three products, the limited number of animals treated by IVCE with these products, and the limited presence of IVCE in Denmark. Furthermore, any foreclosure strategy is unlikely to have an impact on competitors given the very low incidence rates and / or animals treated. The Commission therefore does not consider it likely that the Merged Entity would engage in input foreclosure of Forthyron, Libromide and Osphos in Denmark.

6.3.7. The Commission's assessment – Finland

(104) In addition to the five products considered as unique at EEA level, Dechra supplies two products that are unique in Finland, namely, Forthyron, and Libromide.

(105) *As regards Forthyron,* which would concern approximately […] patients in Finland according to the Notifying Party, responding clinics indicated that the proportion of revenues coming from patients using Forthyron was below […]%. Furthermore, IVCE only treated […] patients and its profits downstream (around

102 Annex 7.1 to the Form CO (dogs treated in veterinary clinics in the UK).
103 2022 data was not available, but IVCE […] during the period 1 January 2023 - 30 September 2023.
104 Annex 7.1 to the Form CO (dogs treated in veterinary clinics in the UK).
105 Annex 4.3 submitted on 15 December 2023.

EUR […]) are significantly lower than the profits generated by Dechra of its sales of Forthyron (around EUR […]) and in any case very small.[106]

(106) *As regards Libromide*, it does not appear to be an important product in terms of patients treated or revenues generated, as the market investigation indicated that both would be below 1%. Furthermore, responding clinics in Finland explained that they would lose little or no patients if they did not have access to Libromide anymore.[107]

(107) Against this background, the Merged Entity is unlikely to have the incentive to foreclose downstream competitors. This is because it would unlikely be able to recoup sufficient upstream losses at the downstream level, given IVCE's low sales of these products, and limited number of patients treated. Furthermore, any foreclosure strategy is unlikely to have an impact on competitors given that they confirmed in the market investigation that these products constituted a small proportion of their revenues and / or that they would lose little or no patients should they stop having access to the products in question. The Commission therefore does not consider it likely that the Merged Entity would engage in input foreclosure of Forthyron and Libromide in Finland.

6.3.8. The Commission's assessment – Ireland

(108) In addition to the five products considered as unique at EEA level, Dechra supplies two products that are unique in Ireland, namely, Libromide and Osphos.

(109) *As regards Libromide*, the market investigation in Ireland provided mixed views as to its importance. The Commission notes however that Irish clinics indicated that revenues from the Libromide treatment are limited and are not likely to lose many patients.[108] For 2022, IVCE's profits (approximately EUR […]) are significantly lower than the profits generated by Dechra upstream (approximately EUR […]) and remain in any case very small.[109] This shows that Dechra would put at risk higher profits if it were to foreclose competing veterinary clinics without the guarantee of recouping these profits downstream. Further, veterinary clinics in Ireland confirmed that they would lose little or no patients if access to Libromide were to hypothetically stop.[110]

(110) *As regards Osphos*, its lack of importance is reflected in the fact that […], and the market investigation also confirmed its low importance. Consequently, IVCE […] from treating patients with Osphos. Further, Dechra only generated approximately EUR […] in profits in 2022 for Osphos in Ireland, which is immaterial. Veterinary clinics in Ireland confirmed that they would lose little or no patients if access to Osphos were to hypothetically stop.[111]

(111) Lastly, as shown above, IVCE's market share downstream is limited in Ireland, where its market share is maximum [10-20]% in value for veterinary services.

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106 Profits for the year 2022.
107 Response to Q2 – Questionnaire to veterinary services, Questions E.4.
108 Response to Q2 – Questionnaire to veterinary services, Questions E.4. and E.5.
109 Please see Annex 4.3 to the Form CO.
110 Response to Q2 – Questionnaire to veterinary services, Questions E.4.
111 Response to Q2 – Questionnaire to veterinary services, Questions E.4.

(112) Against this background, the Merged Entity is unlikely to have the incentive to foreclose downstream competitors. This is because it would unlikely be able to recoup sufficient upstream losses at the downstream level, given IVCE's low sales of these products, limited number of patients treated, and IVCE's limited presence in the country. Furthermore, any foreclosure strategy is unlikely to have an impact on competitors in Ireland given that they confirmed in the market investigation that they would lose little or no patients if access to the above-mentioned products were to hypothetically stop. The Commission therefore does not consider it likely that the Merged Entity would engage in input foreclosure of Libromide and Osphos in Ireland.

6.3.9. The Commission's assessment – the Netherlands

(113) In addition to the five products considered as unique at EEA level, Dechra supplies Equibactin in the Netherlands, which is considered as unique.

(114) First, IVCE only treated […] patients with Equibactin in the Netherlands. Its profits out of the revenues of Equibactin were significantly lower than those of Dechra's, namely approximately EUR […] compared to Dechra's profits of EUR […] for 2022. Second, the market investigation indicated that Dechra's pharmaceuticals for which no suitable alternatives exist concern less than 5% of their patients. The same is true compared to the cost of pharmaceuticals borne by clinics in the Netherlands. Furthermore, clinics also considered that post-Transaction they would likely continue having access to all the needed animal pharmaceuticals at competitive conditions in the EEA. Respondents in the Netherlands also said that overall they would continue being able to provide competitive veterinary services.[112] Lastly, respondents said that they would lose little or no patients should they stop having access to Equibactin.[113]

(115) Against this background, the Merged Entity is unlikely to have the incentive to foreclose downstream competitors. This is because it would unlikely be able to recoup sufficient upstream losses at the downstream level, given IVCE's low sales and limited number of patients treated. Furthermore, any foreclosure strategy is unlikely to have an impact on competitors given that they confirmed in the market investigation that they would lose little or not patients if access to the above-mentioned products were to hypothetically stop. The Commission therefore does not consider it likely that the Merged Entity would engage in input foreclosure of Equibactin in the Netherlands.

6.3.10. The Commission's assessment – Norway

(116) In addition to the five products considered as unique at EEA level, Dechra supplies one product that is unique in Norway, namely Forthyron.

(117) *As regards Forthyron*, its lack of importance is reflected in the fact that […]. In addition, the clinic responding to the market investigation that is active in Norway, consider Forthyron as not important for its clinic.[114]

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112 Response to Q2 – Questionnaire to veterinary services, Question E.5.
113 Response to Q2 – Questionnaire to veterinary services, Questions E.4.
114 Response to Q2 – Questionnaire to veterinary services, Questions E.4.

(118) As mentioned, IVCE […]. Further, Dechra generated approximately EUR […] in profits in 2022.[115] This shows that Dechra would put at risk higher profits if it were to foreclose competing veterinary clinics without the guarantee if recouping these profits downstream. This is further supported by respondents in Norway indicating that they would lose little or no patients should they not have access to Forthyron.[116]

(119) Lastly, as shown above, IVCE's market share downstream is limited in Norway, where its market share is maximum [10-20]% in value for veterinary services.

(120) Against this background, the Merged Entity is unlikely to have the incentive to foreclose downstream competitors. This is because it would unlikely be able to recoup sufficient upstream losses at the downstream level, given IVCE's low sales of these products, limited number of patients treated, and IVCE's limited presence in the country. Furthermore, any foreclosure strategy is unlikely to have an impact on competitors given that they confirmed in the market investigation that they would lose little or no patients if access to the above-mentioned products were to hypothetically stop. The Commission therefore does not consider it likely that the Merged Entity would engage in input foreclosure of Forthyron in Norway.

6.3.11. The Commission's assessment – Poland

(121) In addition to the five products considered as unique at EEA level, Dechra supplies three products that are unique in Poland, namely, Equisolon, Isaderm, and Osphos.

(122) *As regards Equisolon*, IVCE only treated […] animals in Poland. Profits of both IVCE and Dechra for that product were low, respectively, approximately EUR […] and EUR […] in 2022.[117]

(123) *As regards Isaderm*, IVCE only treated […] animals out of the estimated […] that receive Isaderm in Poland. The limited importance of this product is also reflected in IVCE's low profits for 2022 (approximately EUR […]) compared to Dechra's profits (approximately EUR […]).[118] Isaderm is used for the treatment of surface pyoderma, which according to the Notifying Party, only arises in 1.7% of dogs.[119]

(124) *As regards Osphos*, IVCE […].[120] Hence, the product cannot be considered an important input for IVCE's practice.

(125) The market investigation did not reveal any concerns related to the above-mentioned products in Poland.

(126) Against this background, the Merged Entity is unlikely to have the incentive to foreclose IVCE's competitors because it is not likely to recoup the upstream losses with higher prices downstream given its limited sales of each of the three products, the limited number of animals treated by IVCE with these products, and the limited presence of IVCE in Poland. The limited number of animals treated also shows that any foreclosure strategy is unlikely to have an impact on competitors.

115 Please see Annex 4.3 to the Form CO.
116 Response to Q2 – Questionnaire to veterinary services, Questions E.4.
117 Annex 4.3 to the Form CO, as submitted on 15 December 2023.
118 Annex 4.3 to the Form CO, as submitted on 15 December 2023.
119 Annex 7.1 to the Form CO (dogs treated in veterinary clinics in the UK).
120 Annex 4.3 to the Form CO, as submitted on 15 December 2023.

The Commission therefore does not consider it likely that the Merged Entity would engage in input foreclosure for Equisolon, Isaderm and Osphos in Poland.

6.3.12. The Commission's assessment – Portugal

(127) In addition to the five products considered as unique at EEA level, Dechra supplies four products that are unique in Portugal, namely Equibactin, Equipalazone, Equisolon, Osphos.

(128) *As regards all these products,* the Commission notes that they are used for the treatment of horses.[121] IVCE does not offer equine services in Portugal and has […]. This is also shown by […] from the sale of these products.[122]

(129) The market investigation did not reveal any concerns with regards to these products in Portugal.

(130) Against this background, the Merged Entity will not have the incentive to foreclose downstream competitors because it will not be able to recoup sufficientlosses suffered upstream due to the fact that IVCE does not offer equine services in Portugal and therefore is unlikely to generate any sales from Equibactin, Equipalazone, Equisolon and Osphos. In conclusion, the Commission therefore does not consider it likely that the Merged Entity would engage in input foreclosure for the above-mentioned products in Portugal.

6.3.13. The Commission's assessment – Spain

(131) In addition to the five products considered as unique at EEA level, Dechra supplies two products that are unique in Spain, namely, Equibactin and Equisolon.

(132) *As regards Equibactin,* its lack of importance is reflected in the fact that IVCE […] in Spain, and the market investigation also confirmed its low importance.[123] Consequently, IVCE […]. Further, Dechra only generated approximately EUR […] in profits in 2022, which is immaterial.[124] Further, veterinary clinics in Spain confirmed that they would lose little or no patients if access to Equibactin were to hypothetically stop.[125]

(133) *As regards Equisolon,* its lack of importance is reflected in the fact that IVCE […] in Spain. Consequently, […]. Further, Dechra only generated approx. EUR […] in profits in 2022, which is immaterial. Veterinary clinics in Spain that they would lose little or no patients if access to Equisolon were to hypothetically stop. [126]

(134) Lastly, as shown above in Table 3, IVCE's market share downstream is limited in Ireland, where its market share is at most [0-5]% in value for veterinary services.

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121 Annex 4.3 to the Form CO, as submitted on 15 December 2023, and response to Question 1 of RFI 11.

122 Annex 4.3., as submitted on 15 December 2023.

123 Response to Q2 – Questionnaire to veterinary services, Questions E.4.

124 Please see Annex 4.3 to the Form CO.

125 Response to Q2 – Questionnaire to veterinary services, Questions E.4.

126 Response to Q2 – Questionnaire to veterinary services, Questions E.4.

(135) Against this background, the Merged Entity is unlikely to have the incentive to foreclose downstream competitors. This is because it would unlikely be able to recoup sufficient upstream losses at the downstream level, given IVCE's low sales of these products, the limited number of patients treated, and IVCE's limited presence in the country. Furthermore, any foreclosure strategy is unlikely to have an impact on competitors given that they confirmed in the market investigation that they would lose little or no patients if access to the above-mentioned products were to hypothetically stop. In conclusion, the Commission does not consider it likely that the Merged Entity would engage in input foreclosure of Equibactin and Equisolon in Spain.

6.3.14. The Commission's assessment - Sweden

(136) In addition to the five products considered as unique at EEA, Dechra sells Osphos and Libromide in Sweden. Given that the same considerations apply for both Osphos and Libromide, the Commission will provide its consolidated views on both products together.

(137) Responding clinics in Sweden considered that Libromide and Osphos are not important for their practice. Market participants in Sweden further indicate that the number of patients using Osphos and Libromide is below 10%, and that these products do not account for much in their revenues (below 5%, and sometimes even accounting for less than 1%). Clinics active in Sweden responded that they would lose little or no patients if they did not have further access to Osphos and Libromide. Overall, they considered that they would be able to offer competitive veterinary services even if they did not have the same access to Dechra's Osphos and Libromide as they currently have.[127] This is because "*For most treatments there are available alternatives, only unique products for smaller niches that will not impact our ability to offer competitive services*."[128]

(138) Overall market participants active in Sweden considered that the potential impact of the Transaction would be limited.

(139) Against this background, the Merged Entity is unlikely to have the incentive to foreclose downstream competitors. This is because it would unlikely be able to recoup sufficient upstream losses at the downstream level, given that clinics in Sweden confirmed that patients were unlikely to switch clinics if they did not have further access to Osphos and Libromide. Furthermore, any foreclosure strategy is unlikely to have an impact on competitors given that the small proportion of revenues impacted. The Commission therefore considers that the Merged Entity is unlikely to engage in input foreclosure for Osphos and Libromide in Sweden.

127 Response to Q2 – Questionnaire to veterinary services, Question E.5.
128 Response to Q2 – Questionnaire to veterinary services, Question E.6.

6.4. Customer foreclosure

(140) Customer foreclosure relates to the risk that Dechra's competitors would be deprived from a sufficient customer base because IVCE would mainly source animal pharmaceuticals from Dechra, procure products from Dechra at more favourable terms, or impose higher rebates for competitors post-Transaction.

(141) In this context, some market participants voiced concerns that the Merged Entity might benefit from greater transparency gained on the market. The Commission will review this claim in the context of customer foreclosure.

6.4.1. The Notifying Party's view

(142) The Notifying Party puts forward several arguments against a customer foreclosure scenario.

(143) First, as regards the Merged Entity's ability to engage in customer foreclosure, the Notifying Party argues that IVCE's market share for veterinary services remains below [30-40]% in all jurisdictions, with the exception of Finland, where IVCE achieves [30-40]% market share. Therefore, there would not be any ability to foreclose.[129]

(144) Second, the Merged Entity would not have the incentive to switch IVCE's procured products towards Dechra. This is because, for approximately […]% of the veterinary pharmaceutical products procured by IVCE, Dechra does not offer a suitable alternative product. Veterinary clinics – including IVCE – are therefore expected to continue to purchase the majority of their animal pharmaceuticals from Dechra's upstream competitors.[130]

(145) Third, Dechra only accounts for […]% of animal pharmaceuticals procured by IVCE, with […]% of veterinary pharmaceutical products procured by IVCE being supplied by Dechra's rivals. If IVCE were to attempt to steer sourcing to Dechra, it would risk retaliation from rival suppliers which would harm IVCE's business.[131]

(146) Lastly, there would be no anti-competitive effects on the upstream level since Dechra's upstream rivals, many of which are significantly larger than Dechra in terms of revenues and product offering, would have access to a sufficient customer base even if IVCE were to be excluded.[132]

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129 Market shares based on value. See Table 3.

130 Please see paragraphs 561 and 562 of the Form CO specifically.

131 Paragraphs 563 and 564 of the Form CO.

132 Paragraph 565 of the Form CO.

6.4.2. The Commission's assessment

6.4.2.1. As mentioned above, for the purposes of this decision, the Commission carries out the competitive assessment as regards the provision of veterinary clinics at national geographical level. Given that IVCE […], and that the same considerations apply across EEA jurisdictions, the Commission will provide its assessment of customer foreclosure as a whole, with reference to specific national characteristics to the extent relevant.Ability to foreclose

(147) As mentioned by the Non-Horizontal Merger Guidelines, when considering whether the Merged Entity would have the ability to foreclose access to downstream markets, the Commission examines whether there are sufficient economic alternatives in the downstream market for the upstream rivals (actual or potential) to sell their output.[133] For this purpose, the purchasing share for animal pharmaceuticals is a relevant parameter as it allows to assess the importance of IVCE as a customer for animal pharmaceuticals, and therefore examine whether competing pharmaceutical manufacturers would have sufficient alternative veterinary clinics to which they can sell their products.

(148) The Commission first notes that IVCE's purchasing share at EEA level for pharmaceutical products is below 10%, and at Member State level below 30%.[134] When further segmenting the purchasing share into CA, where Dechra is stronger, IVCE's purchasing share remains moderate, below 30%, at Member State level.[135]

(149) Second, as stated by the Notifying Party, […]% of IVCE's purchases are of products where Dechra does not compete. This means that IVCE will have to continue to procure its products from alternative pharmaceutical companies for most products.

(150) Third, for most respondents to the Commission's market investigation, IVCE (as a whole) generally accounts for less than 5-10% of their revenues.[136] While there are exceptions, these proportions remain below 30% for most of them. Also, the Commission notes that these percentages might be overestimated because they include revenues generated from products that do not compete against Dechra's products, which again, represent a high proportion in IVCE's purchases (as set out above).

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133 Non-Horizontal Merger Guidelines, paragraph 61.

134 For all jurisdictions where IVCE and Dechra are active. Based on the Notifying Party's response to RFI 10, IVCE's estimated purchasing share for veterinary pharmaceuticals remains (i) below 10% in Germany, France, Spain, Belgium, Norway, Poland, Denmark, Portugal, Austria, Latvia, and Estonia; (ii) below 20% in Ireland and Finland, and (iii) below 30% in the Netherlands and Sweden.

135 For all jurisdictions where IVCE and Dechra are active, in CA. Based on the Notifying Party's response to RFI 10, the purchasing share levels for veterinary pharmaceuticals for CA do not change significantly compared to the purchasing share levels for overall veterinary pharmaceuticals (per footnote 134. For completeness, the Commission notes first that IVCE's purchasing share in Sweden is [30-40]%. Based on the Notifying Party's response, this percentage might be overestimated because this figure results from using IVCE's total Swedish purchases (CA and equine) in relation to the likely underestimated total sales of CA animal pharmaceuticals in Sweden. Second, in relation to concerns raised on potential customer foreclosure for epilepsy CA drugs in France, the Notifying Party explained that IVCE's purchasing share in that field is [5-10]%, hence demonstrating that IVCE is not an important customer for epilepsy CA drugs in France and that alternative customers remain.

136 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question F.1.

(151) Accordingly, the Commission concludes that the Merged Entity is unlikely to have the ability to foreclosure Dechra's competitors.

6.4.2.2. Incentive to foreclose

(152) At the outset, as mentioned above in Section 6.1., the existence of customer foreclosure is based on the fulfilment of three cumulative conditions, i.e. (i) the ability to foreclose, (ii) the incentive to foreclose, and (iii) the impact of foreclosure. There will be no likely customer foreclosure where one of these conditions is missing. As concluded above, the Merged Entity will likely not have the ability to foreclose, hence excluding the likelihood of customer foreclosure. The Commission will nonetheless assess whether the two other conditions apply for sake of completeness.

(153) The Commission notes that the large majority of the respondents (clinics and manufacturers) considered it realistic that post-Transaction IVCE would stop or significantly reduce purchasing and/or IVCE veterinarians would stop or reduce significantly prescribing pharmaceutical products that compete with Dechra's pharmaceutical products. They notably referred to IVCE possibly gaining better pricing from Dechra.[137]

(154) The incentive to engage in customer foreclosure will depend on the extent to which Dechra can benefit from possibly higher price levels in the upstream market arising because of Dechra's rivals being foreclosed. In this case, it is unlikely that IVCE's foreclosure attempt will harm competitors because IVCE's purchasing share for pharmaceutical products is below 30% at Member State level (and most often below 10%),[138] meaning that there are sufficient other alternatives on the market. Also, as mentioned above, IVCE generally does not account for a large part of the manufacturers' revenues.

(155) For completeness, […].[139]

(156) On that basis, the Commission considers it unlikely that the Merged Entity will have the incentives to engage in customer foreclosure.

6.4.2.3. Overall likely impact on effective competition

(157) During the market investigation, most respondents confirmed that the impact of any potential customer foreclosure against competing pharmaceutical manufacturers would be "*insignificant*" or "*minor*". For many of the responding market participants[140]:

- IVCE purchases products that do not compete against Dechra's products, some respondents observing that Dechra's presence in the product areas they operate is "*small*";

137 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Questions F.2. and F.3.

138 IVCE's purchasing share remains below 30% in all Member States in the plausible market for all animal pharmaceuticals as well as CA animal pharmaceuticals (see the Notifying Party's response to RFI 10, submitted on 8 December 2023, and footnote 135 above). There is no indication that IVCE's purchasing share would be materially higher in case of individual animal pharmaceutical products.

139 Feedback from participants also includes the expectation that clinical freedom will continue to apply, please see Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question F.3.; Q2 – Questionnaire to veterinary clinics, Question F.2.

140 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question F.4.

- IVCE does not generally account for a significant proportion of Dechra's competitors' sales, some noting that they have "*no or limited business with IVCE*" in the relevant countries;
- IVCE is a moderate player in the relevant jurisdictions and / or there are sufficient alternatives available.[141] This supports the Notifying Party's argument that the Transaction will not deprive Dechra's competitors of a customer base, and if the Merged Entity were to engage in customer foreclosure, competitors would be able to switch their supply to other veterinary clinics, including veterinary chains similar to IVCE, such as PetCity, VetGruppen, Anicura, VetPartners, and CVS Group, which are active across the EEA.

(158) Lastly, some participants raised concerns over increased transparency within the Merged Entity, in particular as regards IVCE sharing manufacturers' information it collects, e.g. via tenders, with Dechra.[142] […] rebates will reflect the overall composition of each manufacturer's offered portfolio of products, as well as the scope of the portfolio of products procured by a given veterinary clinic.[143] Final prices of a given product are not always representative of a manufacturer's pricing policy for that product. Rather they are the result of negotiations between the veterinary clinic and manufacturers / distributors over a full portfolio of products.[144] Therefore, the increased transparency gained through this Transaction is not likely to impact the competing manufacturers' ability to compete for a given product.

(159) On that basis, the Commission considers it unlikely that any potential customer foreclosure strategy would have an impact on Dechra's competitors' ability to compete, and therefore considers that customer foreclosure is unlikely.

7. CONCLUSION

(160) For the above reasons, the European 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.

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141 Please see Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Questions F.3., F.5. and G.2. For completeness, market participants referred to a certain consolidation on the market where many independent veterinary clinics are acquired by bigger corporations such as IVCE. However, for these statements are not specific to this Transaction, which is the subject of this decision, and many market participants acknowledged that there would be sufficient alternatives to IVCE on the market post-merger.

142 Responses to Q1 - Questionnaire to veterinary pharmaceuticals, Question F.3.

143 Response to Q4 of RFI 9. For instance, the Notifying Party explained in its response that in Finland, the Netherlands and Sweden (where IVCE's market share is the highest), Dechra's only customers that operate tenders are IVCE and AniCura. It provided Dechra's estimate of its sales resulting from tender processes in Finland and the Netherlands, where the data was available, which amounted to [10-20]% and [20-30]% respectively.

144 Response to Q4 of RFI 9.

For the Commission

(Signed)
Margrethe Vestager
Executive Vice-President