EUROPEAN COMMISSION

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Intuitive Surgical S.à r.l.
Chemin des Muriers 1
1170 Aubonne
Switzerland

Subject: **Case M.11900 – INTUITIVE / AB MEDICA (DISTRIBUTION ACTIVITIES OF INTUITIVE PRODUCTS)**
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 5 September 2025, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation (the "Transaction"), through which Intuitive Surgical S.à r.l, (Switzerland) which is ultimately owned by Intuitive Surgical, Inc. (United States, together with Intuitive Surgical S.à r.l, "Intuitive" or the "Notifying Party") will acquire from the AB Medica Group ("AB Medica", Italy) sole control within the meaning of Article 3(1)(b) of the EU Merger Regulation of AB Medica's distribution activities of Intuitive's medical equipment in Italy, Malta, San Marino, Slovenia, Spain and Portugal (the "Target" and, together with Intuitive, the "Parties") by way of purchase of shares and assets. ([3])

([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]) OJ C, C/2025/5038, 12.9.2025.

1. THE PARTIES

(2) **Intuitive** is active in the provision of surgical equipment worldwide. The solutions provided by Intuitive range from robotic-assisted surgical ("RAS") systems for minimally invasive care (marketed as "Da Vinci Surgical Systems") and bronchoscopy systems for minimally invasive biopsies in the lung (marketed as "Ion Endoluminal Systems") to data generation systems and related instruments, accessories and services.

(3) **The Target** includes AB Medica's distribution activities for Intuitive's RAS equipment in Italy, Malta, San Marino, Slovenia, Spain and Portugal (together, the "Territories"). The Target includes: (i) distribution activities related to Intuitive's RAS equipment carried out in Italy; (ii) shares of Abex Excelencia Robótica S.L. ("Abex", Spain), which will also include Rentalmed S.L. (Spain); (iii) shares of Excelência Robotica Unipessoal, Lda.(Portugal); and (iv) all contracts for the distribution of Da Vinci Surgical Systems in Slovenia and Malta. The Transaction also includes some contracts governing the supply of both Intuitive's RAS equipment and non-Intuitive equipment (ancillary to Intuitive's RAS equipment) to public hospitals in the Territories. ([4])

2. THE CONCENTRATION

(4) Pursuant to an agreement signed between Intuitive and AB Medica on 21 January 2025, Intuitive will acquire sole control of AB Medica's distribution activities for Intuitive's RAS equipment in Italy, Malta, San Marino, Slovenia, Spain and Portugal. Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million ([5]) (Intuitive: EUR 6 588.4 million and the Target: EUR […]). Each of them has a Union-wide turnover in excess of EUR 250 million (Intuitive: EUR 708.1 million and the Target: EUR […]), and neither of them 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.

4. RELEVANT PRODUCTS AND MARKETS

4.1. Market definition

(6) The Transaction does not give rise to any horizontal overlap and results in a vertical relationship between Intuitive's activities in the manufacture and sale of surgical equipment (upstream) and the Target's activities in the distribution of medical devices (downstream). The Transaction gives also rise to conglomerate

([4]) These mixed contracts were awarded through public procurement procedures to entities within the Target group. […]. Depending on the outcome of this process, it is possible that, at completion of the Transaction, certain contracts to be transferred to Intuitive will also govern the supply of ancillary non-Intuitive medical equipment in order to ensure continuity of supply and compliance with public procurement laws. [Intuitive is not expected to be active in distributing such ancillary third party equipment].

([5]) Turnover calculated in accordance with Article 5 of the Merger Regulation.

relationships because Intuitive's equipment is occasionally distributed together with other products in response to tender requests.

4.1.1. Product market definition

4.1.1.1. Market for the manufacture and sale of surgical equipment (upstream)

(7) There are two broad types of surgery:

(a) **Open surgery,** which refers to surgical operations where the surgeon performs a large incision to access the patient's relevant organ directly.

(b) **"Keyhole" surgery,** which refers to minimally invasive surgery via the insertion of surgical tools through one or more small incisions or through natural body orifices. While this type of surgery may not be available in every situation, such minimally invasive processes generally have shorter recovery times, better aesthetic outcome, and lower risks of infection than open surgery. There are several types of keyhole surgeries including:

- **Laparoscopy**, which entails the insertion of surgical tools and a camera through several small incisions to allow the surgeon to see the inside of the relevant organ and perform the surgery. In this case, the surgeon directly (i.e., by hand) manipulates the surgical tools to conduct surgery the patient on the operating table.
- **Robotically-assisted surgery ("RAS")**, which also involves small incisions, a camera and surgical instruments. However, the instruments are operated remotely by the surgeon via a console, and a robotic arm manipulates said instruments to conduct surgery on the patient. RAS can enable a surgeon to benefit from greater flexibility, stability and range of motion than what may be possible for a surgeon operating equipment by hand.

(8) Equipment for these different types of surgery can vary significantly with open surgery requiring cutting and other handheld instruments for the surgeon (such as a scalpel, forceps, scissors, clamps, etc), laparoscopy requiring smaller tools in addition to a camera equipped catheter, and RAS requiring a robotic arm and all its associated tips.

4.1.1.1.1. The Commission's past practice

(9) The Commission has not previously assessed the manufacture and sale of surgical equipment specifically.

(10) Nevertheless, in *Johnson & Johnson/Guidant,* the Commission established that in the context of cardiac surgery devices, keyhole surgery equipment (in that case endoscopic vessel harvesting systems) was on a different market than traditional heart surgery equipment. ([6]) The Commission further detailed that, although both types of surgery delivered the same results, they differed "*considerably in terms of procedure, required surgical skills, patient's recovery time and risk of complications.*" In addition, the Commission highlighted that the price of equipment for keyhole surgery was considerably higher than that for traditional open surgery.

([6]) See European Commission decision of 25 August 2005 in case M.3687 –*Johnson&Johnson / Guidant*, paras. 62-64.

(11) In another case, while leaving the exact product market definition open, the Commission found that suturing tools used in open surgery differed in characteristics from those used in keyhole surgery as the latter were "*significantly more expensive and clinically unsuitable for open surgery*." ([7])

4.1.1.1.2. The Notifying Party's views

(12) The Notifying Party submits that the surgical tools used for open surgery and those used for keyhole surgery are on the same market.

(13) This is mostly because the surgical techniques, i.e., open surgery and keyhole surgery (whether laparoscopy or RAS), may be and are regularly used interchangeably for the same types of surgical interventions. The choice between surgical techniques is made according to the patient's characteristics and the surgeon's preferences.

(14) On the demand-side, the Notifying Party submits that the costs of the different procedures are comparable considering the different financing options of the equipment such as leasing, which make RAS equipment, for example, just as affordable as equipment for open surgery. A potential difference in costs is also particularly irrelevant in the Territories considering that the reimbursement systems in place tend to not differentiate between the types of surgery and can sometimes allow for higher reimbursement rates for equipment such as RAS equipment. In addition, since keyhole surgeries allow for shorter recovery times and reduced treatments, a potential difference in upfront cost between open and keyhole surgery would be negated when looking at the overall cost of the surgical procedure (including post-operation time and costs).

(15) On the supply-side, the Notifying Party submits that there are many players active in the manufacture of RAS, laparoscopy, and open surgery equipment.

(16) Finally, the Notifying Party submits that the regulatory landscape is the same for all types of surgical equipment namely the Medical Devices Regulation. ([8])

(17) With respect to a potential further segmentation of equipment for keyhole surgery based on the specific type of surgery (e.g. laparoscopy and RAS), the Notifying Party submits that RAS and laparoscopic equipment can be deployed for the same procedures, and it is the surgeon that chooses which technique to use. They further highlight that a laparoscopic tower ([9]) and an RAS tower have very similar appearances and that the tower used in Intuitive's RAS systems can also be used in laparoscopic surgery.

([7]) See European Commission decision of 7 August 1998 in case IV/M.1223 TYCO INTERNATIONAL / US SURGICAL CORP, para. 8.

([8]) Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC, OJ L 117, 5.5.2017.

([9]) A laparoscopic tower (or "laparoscopic stack system") is a set of medical equipment used during laparoscopic surgeries to facilitate minimally invasive procedures by providing the necessary tools and technologies to visualise and operate within the body through small incisions.

4.1.1.1.3. The Commission's assessment

4.1.1.1.3.1. Open surgery equipment and keyhole surgery equipment

(18) The Commission investigated the extent to which equipment for open surgery and equipment for keyhole surgery (and, in particular RAS, where Intuitive is active) are substitutable.

(19) The market investigation supported the Notifying Party's claim that in principle certain surgical procedures such as a prostatectomy or hysterectomy can be carried out using either open surgery or keyhole surgery. ([10]) However, many respondents indicated that there are certain types of procedure for which RAS is either strongly preferred or the standard of care, due to the advantages it delivers. Nevertheless, the relevant question is whether the equipment – rather than the procedures – is substitutable. In this respect, the market investigation indicated that the manufacture and supply of open surgery equipment is unlikely to be part of the same relevant market as the manufacture and supply of keyhole surgery equipment, for the following reasons.

(20) On the demand-side, the market investigation confirmed that equipment for open surgery and RAS generally have distinct functionalities and intended use. ([11]) These equipment "*are designed for fundamentally different surgical approaches*", as open surgery equipment is used for direct access to the surgical site via larger incisions, whereas equipment for keyhole surgery seeks to enable minimally invasive procedures through small incisions. The workflows and operating environments for using each equipment differ. This was further confirmed in the market investigation when some respondents highlighted that keyhole surgery equipment such as RAS or laparoscopic equipment required additional specific training including a "*significant learning curve*". ([12])

(21) There is also a significant difference in price between these types of equipment. Indeed, the Notifying Party has explained that the upfront cost of purchase of RAS equipment such as its Da Vinci platform varies between EUR […] and EUR {…], while laparoscopic surgery equipment can be priced at several hundred thousand, and open surgery at maximum tens of thousands. ([13]) The price of open surgery equipment is therefore greatly inferior to that of laparoscopic surgery or RAS equipment. The market investigation confirmed that RAS is significantly more expensive than open surgery equipment (or indeed laparoscopy equipment), with one respondent characterising open surgery equipment as "*comparatively inexpensive and widely available*". ([14]) Market participants also explained that the cost savings that a keyhole surgery could entail in terms of post-operation recovery times and infection rates were insufficient to find that open surgery equipment and keyhole surgery equipment had comparable cost structure (i.e. if not only the up-front procurement costs were considered but also the longer term cost/savings from using the equipment). One market participant specifically explained that "*MIS* [minimally invasive surgery] *surgeries like RAS and lap offer faster patient recovery, shorter surgery lengths over Open procedures, so there*

([10]) Responses to the Commission's market investigation questionnaire, question D.A.1.1 and D.A.3.1.
([11]) Responses to the Commission's market investigation questionnaire, question D.A.1.
([12]) See response of a competitor to Commission market investigation questionnaire, question D.A.2.
([13]) Notifying Parties' reply to RFI 2, question 1.
([14]) Responses to the Commission's market investigation questionnaire, question D.A.6.

may be some cost savings over open procedures but today these may not fully off-set the higher cost of RAS procedures." ([15])

(22) Reflective of these differences, the market investigation confirmed that RAS equipment is typically procured via separate tenders from other types of equipment such as open surgery equipment. ([16])

(23) On the supply-side, the market investigation confirmed that there is limited supply-side substitution between equipment for open surgery and RAS (without providing a view on the extent of substitutability between open surgery and laparoscopy) in view of the costs and time required to develop the products. ([17])

(24) In any event, the question of whether the manufacture and supply of open surgery equipment may form part of the same relevant market as the manufacture and supply of keyhole surgery equipment can be left open, as in either case the Transaction does not give rise to serious doubts as to its compatibility with the internal market and with the EEA Agreement.

4.1.1.1.3.2. Laparoscopy equipment and RAS equipment

(25) There are several types of keyhole or minimally invasive surgeries. Equipment used for these types of surgery can vary greatly. For the purpose of this decision, the Commission investigated whether the manufacture and supply of equipment for laparoscopic surgery and equipment for RAS were to be considered on the same market.

(26) The market investigation supported the Notifying Party's claim that in principle certain surgical procedures can be carried out using either laparoscopy or RAS. ([18]) However, many respondents indicated that there are certain types of procedure for which RAS is either strongly preferred or the standard of care due to the advantages it delivers. ([19]) Nevertheless, the relevant question is whether the equipment – rather than the procedures – are substitutable. In this respect, the market investigation indicated that the manufacture and supply of laparoscopic equipment is unlikely to be part of the same relevant market as the manufacture and supply of RAS equipment, for the following reasons.

Demand-side substitutability

(27) With respect to the specific characteristics of these two types of equipment, the vast majority of the market participants submitted that they are either not interchangeable at all or only partially interchangeable. ([20]) They indicated that equipment for RAS is very specialised and typically designed to be used only with one specific robotic system. One hospital further detailed that "*RAS systems require proprietary robotic instruments and interfaces that are not compatible with standard laparoscopic ports or tools. Additionally, the absence of direct tactile sensation in RAS necessitates different training and handling protocols. The infrastructure and workflow associated with robotic systems also differ significantly from those of conventional laparoscopy Therefore, while the two modalities may be used for similar clinical indications, the equipment itself is not*

([15]) Responses to the Commission's market investigation questionnaire, question D.A.7.
([16]) Responses to the Commission's market investigation questionnaire, question D.A.5.
([17]) Responses to the Commission's market investigation questionnaire, question D.A.9 and D.A.10.
([18]) Responses to the Commission's market investigation questionnaire, question D.A.1 and D.A.3.
([19]) For instance, one respondent indicated that complex cancer surgeries near critical organs may require a high level of precision for which RAS is required or strongly preferred.
([20]) Responses to the Commission's market investigation questionnaire, question D.A.2.

fully interchangeable due to differences in functionality, control mechanisms, and system integration." *([21])* Respondents added that in some cases surgeons would use both laparoscopy and RAS equipment in the same procedure, as complements for different purposes.

(28) As mentioned in section 4.1.1.1.3.1 above, the price difference between laparoscopic equipment and RAS equipment is not negligeable per the Notifying Party's submission. This was further confirmed during the market investigation where the majority of market participants found that RAS equipment is significantly more expensive than laparoscopic equipment. ([22]) For example, one hospital specified that "*although both approaches use advanced technology, the initial investment for laparoscopy is much lower. A laparoscopic unit typically consists of towers, light sources, cameras and reusable instruments, all of which can be acquired at a fraction of the cost of a robotic system. Maintenance costs are also lower, as laparoscopic equipment can often be serviced by a wider range of suppliers and does not require the same level of proprietary manufacturer support. Consumable use in laparoscopy is limited compared with robotic surgery, as most laparoscopic instruments can be sterilised and reused many times. Robotic systems, however, require frequent replacement of instruments due to limited use cycles, significantly adding to procedure costs. Furthermore, robotic systems necessitate considerable space within operating theatres and integration with hospital information systems, often requiring infrastructure modifications*." ([23])

(29) Reflective of these differences, the market investigation confirmed that RAS equipment is typically procured separately from laparoscopy equipment. ([24]) One respondent explained that this is due to "*the specialized nature, cost, and distinct technical requirements of RAS systems*".

(30) Finally, the market investigation indicated that not all RAS equipment may be substitutable from a demand-side perspective. This is because some RAS equipment is specifically designed to perform certain procedures, while others may be designed for a broader set of uses. Respondents also indicated that regulatory approval for RAS equipment may only be for certain surgical procedures, limiting their substitutability with other RAS equipment. ([25])

Supply-side substitutability

(31) On the manufacturing side, the majority of market participants have submitted that the development of new RAS equipment would take at least 5 years ([26]) with a laparoscopic equipment manufacturer detailing that the development of such RAS equipment includes:

- *Extensive research and innovation phases that date back decades, with incremental technological milestones over many years.*
- *Rigorous design, prototyping, and testing of complex robotic arms, wristed instruments, advanced imaging, and surgeon consoles.*

([21]) Responses the Commission's market investigation questionnaire, question D.A.2.1
([22]) Responses to the Commission's market investigation questionnaire, question D.A.6.
([23]) Response to the Commission's market investigation questionnaire, question D.A.6.1.
([24]) Responses to the Commission's market investigation questionnaire, question D.A.5.
([25]) Responses to the Commission's market investigation questionnaire, question D.A.11.
([26]) Responses to the Commission's market investigation questionnaire, question D.A.9.

- *Lengthy regulatory approval processes for safety and efficacy, which can span multiple years and require comprehensive clinical trials. ([27])*

(32) Confirming this further, the Notifying Party has also submitted that the development of its own RAS systems ranged from […] years depending on the complexity of the system. ([28])

(33) In addition, the cost of developing an RAS tool is significant. Specifically, the vast majority of responding market participants submitted that the cost of developing an RAS system exceeded EUR 10 million and was more in the range of billions. ([29]) This was also confirmed by the Notifying Party which estimated the cost of developing an RAS device to be around EUR […]. ([30])

(34) Laparoscopic equipment manufacturers therefore cannot easily switch their production of laparoscopic equipment to start producing RAS equipment.

(35) In any event, the question of whether the manufacture and supply of laparoscopic equipment may form part of the same relevant market as the manufacture and supply of RAS equipment can be left open, as can the question of any possible segmentation of the relevant market for RAS equipment, as in either case the Transaction does not give rise to serious doubts as to its compatibility with the internal market and with the EEA Agreement. For the purposes of this Decision, and on a conservative basis, the Commission will assess the impact of the Transaction on the narrowest plausible market segmentation in the context of this Transaction, namely the market for the manufacture and supply of RAS equipment, as under any broader product market definitions the Parties would hold a less significant position as they do not supply equipment for open surgery or laparoscopy other than RAS equipment.

4.1.1.2. Market for the wholesale distribution of medical devices (downstream)

4.1.1.2.1. The Commission's past practice

(36) In its past decisional practice, the Commission has identified the market for the wholesale distribution of 'medical devices' (including "medical products, durable goods, operating equipment and instruments"). ([31]) In particular, wholesalers of medical devices are expected to, and generally do provide a broad range of different products, equipment and instruments.

4.1.1.2.2. The Notifying Party's views

(37) In line with the Commission's precedents, the Notifying Party submits that the relevant downstream product market is the wholesale distribution of medical devices. The Notifying Party do not consider any further segmentation of wholesale distribution of medical devices as warranted. This is because, in the Notifying Party's view, the distribution of RAS, laparoscopy and open surgery

([27]) Responses to the Commission's market investigation questionnaire, question D.A.9.1.
([28]) Form CO paragraph 207
([29]) Responses to the Commission's market investigation questionnaire, questions D.A.10 and D.A.10.1.
([30]) Form CO paragraph 207
([31]) *See* European Commission decision of 7 August 2012 in case M.6560 – *EQT VI / BSN Medical*, paras. 23-25; and European Commission decision of 19 April 2011 in case M.6108 – *EQT V / Dometic*, paras. 16-18.

devices does not require any specific conditions, qualifications, or regulatory approvals beyond those required for other medical devices.

(38) More specifically, the Notifying Party submits that there are:

- no specific regulatory approvals distinct from those required for other medical devices: medical devices, including RAS and laparoscopy systems, are subject to the Medical Devices Regulation, which governs the distribution, design, manufacture, conformity assessment and labelling of medical devices including RAS and laparoscopy systems. Distributors must ensure compliance with the regulation, such as passing the conformity assessment to obtain the CE mark;
- no training requirements: no specialized training is required for distributing RAS and laparoscopy systems beyond what is necessary for other medical devices. However, distributors themselves are required to offer technology training to end users, such as hospitals and clinics, to ensure safe usage of the devices; and
- no particular transportation requirements: there are no unique transportation requirements for RAS and laparoscopy systems compared to other medical devices. The process of sending and setting up systems like the Da Vinci Surgical Systems is straightforward and user-friendly.

(39) Indeed, generally, wholesalers of surgical equipment provide a broad range of products and are not limited to one specific type of equipment, and the end customers typically procure a wide array of medical devices from the same distributors.

4.1.1.2.3. The Commission assessment

(40) The market investigation broadly confirmed the Commission's past approach and the Notifying Party's submission.

(41) Specifically, the vast majority of responding market participants agreed that there is a relevant product market for the wholesale distribution of all medical devices (including medical products, durable goods, and operating equipment and instruments). ([32]) They also confirmed that distributors are generally all able to supply a full range of products and no specific regulatory approval is required. ([33])

(42) However, the majority of respondents to the market investigation submitted that specific transport requirements are required to distribute RAS equipment compared to other medical devices. This is due to the "*size, weight and sensitivity" ([34])* of the equipment which can require skilled handling. In addition, the vast majority of respondents to the market investigation submitted that distributors of RAS equipment are required to undergo specialised training ([35]) with one respondent explaining that Manufacturers of RAS systems typically require that *distributors and associated clinical staff undergo structured training programmes tailored to specific device models. These programmes often include simulation-based modules, supervised clinical exposure, and competency*

([32]) Responses to the Commission's market investigation questionnaire, question E.A.1.
([33]) Responses to Commission questionnaire, question E.A.2.
([34]) Responses to Commission questionnaire, question E.A.4.1.
([35]) Responses to Commission questionnaire, question E.A.3.

assessments. The training is not only essential for safe and effective use but also forms part of the manufacturer's risk management and compliance strategy. ([36])

(43) In any event, for the purposes of this decision, the exact definition of the relevant product market can be left open, as the Transaction would not raise serious doubts as to its compatibility with the single market regardless of the product market definition applied.

4.1.2. Geographic market definition

4.1.2.1. Market for the manufacture and sale of surgical equipment

4.1.2.1.1. The Commission past practice

(44) The Commission has not previously defined a geographic market for the manufacture and sale of surgical equipment used for open surgery, laparoscopy or RAS.

(45) With respect to other medical devices, however, generally, the Commission has previously found that the markets were national for several reasons including the different reimbursement schemes from one country to the other, the procurement processes that are usually issued at national level (e.g. public tenders), the price variations between countries, and the presence of different market participants in each country. ([37])

4.1.2.1.2. The Notifying Party's views

(46) The Notifying Party submits that the market for the manufacture and sale of surgical equipment is at least EEA-wide. This is due to the facts that manufacturers and suppliers operate on a cross-border basis facilitated by a harmonised EU regulation. ([38])

(47) The Notifying Party further submits that customers make their purchases on the basis of supplier reputation and cost-effectiveness rather than based on the location of said supplier.

4.1.2.1.3. The Commission's assessment

(48) The market investigation broadly confirmed the Commission's past practice. Indeed, the majority of responding market participants submitted that competition for the sale of RAS equipment occurs primarily at national level. ([39]) Similarly, the majority of respondents submitted that pricing and contractual conditions for RAS equipment are determined country-by-country ([40]) as are the reimbursement conditions. ([41])

([36]) Responses to Commission questionnaire to competitors, question E.A.3.1.

([37]) See, for example, European Commission decision of 2 September 2003 in case M.3083 – *GE / Instrumentarium*; European Commission decision of 27 May 2003 in case M.3146 – *Smith & Nephew / Centerpulse*; European Commission decision of 28 October 1998 in case M.1286 – *Johnson&Johnson / DePuy*; and European Commission decision of 25 August 2005 in case M.3687 –*Johnson&Johnson / Guidant.*

([38]) Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC, OJ L 117, 5.5.2017.

([39]) Responses to Commission questionnaire to competitors, question D.A.13.

([40]) Responses to Commission questionnaire, question D.A.14.

([41]) Responses to Commission questionnaire, question D.A.15.

(49) In addition, the vast majority of respondents to the market investigation explained that tenders issued by hospitals and clinics for the purchase of surgical equipment are at most organised at national level if not at hospital or group of hospitals level. ([42])

(50) In light of the above, the geographic scope of the market for the manufacture and sale of surgical equipment (and its sub-segmentations) is likely national. However, for the purposes of this decision, the exact definition of the relevant geographic market can be left open, as the Transaction would not raise competitive concerns regardless of the geographic market definition applied (EEA or national).

4.1.2.2. Market for the wholesale distribution of surgical equipment

4.1.2.2.1. The Commission past practice

(51) The Commission has previously defined the geographic market for the distribution of medical devices as national in scope. ([43])

4.1.2.2.2. The Notifying Party's views

(52) The Notifying Party proposes to follow the Commission's past practice establishing that the market for the wholesale distribution of medical devices is national in scope. It notes, however, that there are elements pointing to a broader market including cross-border sales, and the regional scope of some distributors.

4.1.2.2.3. The Commission's assessment

(53) The majority of the respondents to the market investigation confirmed the Commission's past practice and considered the market for the distribution of medical device to be national in scope as distributors are mostly active in one country. ([44])

(54) Some market participants, nevertheless, confirmed the Notifying Party's submission that distribution occurs increasingly at regional or pan-European level. ([45])

(55) In any event, for the purposes of this decision, the Commission does not find sufficient evidence to deviate from its past practice and will conduct its assessment at the national level.

5. COMPETITIVE ASSESSMENT

5.1. Legal framework

5.1.1. Non-horizontal mergers

(56) A merger can entail non-horizontal effects when it involves companies operating at different levels of the same supply chain or in closely related markets. Pursuant to the Commission Guidelines on the assessment of non-horizontal mergers under

([42]) Responses to Commission questionnaire, question D.A.16.
([43]) See European Commission decision of 7 August 2012 in case M.6560 – *EQT VI / BSN Medical*, paras. 23-25; and European Commission decision of 19 April 2011 in case M.6108 – *EQT V / Dometic*, paras. 16-18.
([44]) Responses to Commission questionnaire, questions E.A.5 and E.A.5.1.
([45]) Responses to Commission questionnaire, question E.A.5.1.

the Council Regulation on the control of concentrations between undertakings (the "**Non-Horizontal Merger Guidelines**"), ([46]) non-horizontal mergers do not entail the loss of direct competition between merging firms in the same relevant market and provide scope for efficiencies. However, there are circumstances in which non-horizontal mergers may significantly impede effective competition. This is in particular the case if they give rise to foreclosure. ([47])

(57) Vertical mergers involve companies operating at different levels of the supply chain, for example, when a manufacturer of a certain product merges with one of its distributors.

(58) In assessing potential vertical effects of a merger, the Commission analyses whether a merger results in foreclosure so that actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete. Such foreclosure may discourage the entry or expansion of rivals or encourage their exit. Foreclosure thus can be found even if the foreclosed rivals are not forced to exit the market: it is sufficient that the rivals are disadvantaged and consequently led to compete less effectively. Such foreclosure is regarded as anti-competitive where the merging companies—and, possibly, some of their competitors as well—are as a result able to profitably increase the price charged to consumers.

(59) The Non-Horizontal Merger Guidelines distinguish between two forms of foreclosure. ([48]) The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base (customer foreclosure).

(60) In assessing both types of foreclosure, the Commission applies the ability, incentive, effects framework. This implies the assessment of three cumulative conditions, i.e. whether (1) the merged entity would have the ability to engage in foreclosure, (2) it would have the incentive to do so, and (3) what would be the overall impact on effective competition in the affected markets.

(61) Finally, as acknowledged in the Non-Horizontal Guidelines, the merged entity may gain access to commercially sensitive information regarding the upstream or downstream activities of rivals. For instance, by becoming the supplier of a downstream competitor, a company may obtain critical information, which allows it to price less aggressively in the downstream market to the detriment of consumers. Such acquisition of commercially sensitive information may also put competitors at a competitive disadvantage, thereby dissuading them from entering or expanding in the market. ([49])

5.1.2. Conglomerate effects

(62) Conglomerate mergers are mergers between firms that are active in closely related markets (e.g. mergers involving suppliers of complementary products or of products which belong to a range of products that is generally purchased by the same set of customers for the same end use). These firms are in a relationship which is neither purely horizontal (as competitors in the same relevant market) nor vertical (as supplier and customer). According to the Non-Horizontal

([46]) OJ C 265, 18.10.2008, p. 6.
([47]) Non-Horizontal Merger Guidelines, para. 18.
([48]) Non-Horizontal Merger Guidelines, para. 30.
([49]) Non-Horizontal Merger Guidelines, para. 78.

Guidelines, in the majority of circumstances, conglomerate mergers will not lead to any competition problems. ([50])

(63) However, foreclosure effects may arise when the combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another closely related market by means of tying or bundling or other exclusionary practices. While tying and bundling have often no anticompetitive consequences, in certain circumstances such practices may lead to a reduction in actual or potential competitors' ability or incentive to compete. This may reduce the competitive pressure on the merged entity allowing it to increase prices. ([51])

(64) In assessing the likelihood of such a scenario, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals ([52]), second, whether it would have the economic incentive to do so ([53]) and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers. ([54]) In practice, these factors are often examined together as they are closely intertwined.

(65) In order to be able to foreclose competitors, the merged entity must have a significant degree of market power, which does not necessarily amount to dominance, in one of the markets concerned. The effects of bundling or tying can only be expected to be substantial when at least one of the merging parties' products is viewed by many customers as particularly important and there are few relevant alternatives for that product. ([55]) Further, for foreclosure to be a potential concern, it must be the case that there is a large common pool of customers, which is more likely to be the case when the products are complementary. ([56]) Finally, bundling is less likely to lead to foreclosure if rival firms are able to deploy effective and timely counter-strategies, such as single-product companies combining their offers. ([57])

(66) The incentive to foreclose rivals through bundling or tying depends on the degree to which this strategy is profitable. ([58]) Bundling and tying may entail losses or foregone revenues for the merged entity. ([59]) However, they may also allow the merged entity to increase profits by gaining market power in the tied goods market, protecting market power in the tying good market, or a combination of the two. ([60])

(67) It is only when a sufficiently large fraction of market output is affected by foreclosure resulting from the concentration that the concentration may significantly impede effective competition. If there remain effective single-product players in either market, competition is unlikely to deteriorate following

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([50]) Non-Horizontal Merger Guidelines, paras. 91 and 92.
([51]) Non-Horizontal Merger Guidelines, para. 93.
([52]) Non-Horizontal Merger Guidelines, paras. 95-104.
([53]) Non-Horizontal Merger Guidelines, paras. 105-110.
([54]) Non-Horizontal Merger Guidelines, paras. 111-118.
([55]) Non-Horizontal Merger Guidelines, para. 99.
([56]) Non-Horizontal Merger Guidelines, para. 100.
([57]) Non-Horizontal Merger Guidelines, para. 103.
([58]) Non-Horizontal Merger Guidelines, para. 105.
([59]) Non-Horizontal Merger Guidelines, para. 106.
([60]) Non-Horizontal Merger Guidelines, para. 108.

a conglomerate concentration. ([61]) The effect on competition needs to be assessed in light of countervailing factors such as the presence of countervailing buyer power or the likelihood that entry would maintain effective competition in the upstream or downstream markets. ([62])

5.2. Overview of affected markets

(68) The Transaction does not give rise to any horizontal overlaps. It primarily involves a vertical relationship: Intuitive is active upstream in the design, manufacture and sale of Intuitive's RAS equipment, while the Target is active in downstream distribution for medical devices (of Intuitive's RAS equipment in the Territories). The Transaction also gives rise to conglomerate relationships because Intuitive's equipment is occasionally distributed together with other products in response to tender requests. For the purposes of the competitive assessment, and on a conservative basis, the Territories excluding San Marino (the "EEA Territories") are considered, and the assessment is conducted solely with respect to these EEA Territories as under any broader geographic market definitions the Parties would hold a less significant position.

5.2.1. Vertical relationships

(69) AB Medica is the exclusive distributor of Intuitive's RAS equipment in the EEA Territories. The distribution agreement between Intuitive and AB Medica will be terminated on the date of completion of the Transaction. The Transaction involves the sale of the Target, which includes all such distribution activities, to Intuitive by AB Medica.

(70) Upon completion of the Transaction, Intuitive will integrate the Target's distribution assets for the supply of Intuitive's RAS equipment in the EEA Territories and distribute them directly. The Transaction consists therefore in the downstream vertical integration of Intuitive's RAS equipment business at the wholesale distribution level. Intuitive will gain a direct route to the market in the EEA Territories, rather than operating in the EEA Territories through an independent distributor (i.e., AB Medica) […].

5.3. Assessment of the vertical relationship between manufacture and sale of RAS equipment (upstream)—the wholesale distribution of medical devices (downstream)

(71) Vertically affected markets arise as a result of Intuitive's manufacture and sale activities of RAS equipment (upstream) and the Target's distribution of medical devices, including Intuitive's RAS equipment (downstream). The Commission will first review whether, post-Transaction, the Parties will have the ability and the incentive to engage in input foreclosure, and whether this strategy will have an impact on competition (Section 5.3.2). Second, the Commission will assess potential customer foreclosure concerns (Section 5.3.2.3).

5.3.1. Market shares

(72) On the upstream market, the Notifying Party submits that Intuitive has an EEA share of below [20-30]% for the overall market for manufacture and sale of

(61) Non-Horizontal Merger Guidelines, para. 113.

(62) Non-Horizontal Merger Guidelines, para. 114.

surgical equipment and [30-40]% in the narrower segment of the manufacture and sale of RAS equipment.

(73) As explained above (Section 4.1.1 on market definition), the results of the market investigation indicated that the market is most likely narrower than all surgical equipment, and could be limited to the manufacture and sale of RAS equipment only. On this basis, evidence provided in the market investigation showed that Intuitive's market share in RAS equipment is much higher than it estimates.

(a) Respondents identified Intuitive as by far the strongest supplier of RAS equipment across the EEA. ([63]) This was true across the Territories. In particular, respondents indicated that Intuitive's Da Vinci RAS system is the mostwidely adopted RAS system and is considered […] with the largest installed base. ([64]) Respondents also noted in their responses to the market investigation that Intuitive's large installed base suggests that is would have a market share of […] in the EEA and in the EEA Territories. ([65])

(b) While a number of other companies are active in the RAS space, including Zimmer Biomet, Stryker, CMR, and Medtronic, with others in development (e.g., Johnson & Johnson), the results of the market investigation suggest that these RAS solutions are only in the early stages and have not yet been able to gain a strong foothold in the market. ([66])

(c) Several respondents to the market investigation characterised Intuitive as [as strong player]. They indicated that there are several companies that have recently launched or are intending to launch their own RAS systems, but given the length of time Intuitive has been active in the market, the resulting large installed base, and existing customer and contractual relationships, it is currently unclear whether new entrants will be able to change market structure significantly in the near future. ([67])

(d) Respondents also noted that Intuitive's strong position is "*supported by extensive surgeon training, brand recognition, and recent CE approval of the […] Da Vinci 5 system in 2025*." ([68])

(74) This feedback from the respondents to the market investigation is also corroborated by third-party market reports, ([69]) which indicate that, globally, Intuitive remains the "*leading competitor*" in RAS equipment due to "*its early entry into* [the] *space*." ([70]) The report also estimates that Intuitive held an estimated market share of 67.2% in 2024—with the next largest competitors

([63]) See responses to Commission questionnaire to competitors, question D.B.1.
([64]) See responses to Commission questionnaire to competitors, question D.B.2.
([65]) "Installed base" refers to the number of robotic-assisted surgery systems already installed and in use in hospitals. It is an indicator of a supplier's market presence and the extent to which its technology is established in clinical practice. See responses to Commission questionnaire to competitors, question D.B.3.
([66]) See responses to Commission questionnaire to competitors, question D.B.5.1. See also minutes of a call with a manufacturer of surgical equipment held on 5 August 2025, para. 14.
([67]) See responses to Commission questionnaire to competitors, question D.B.3. See also minutes of a call with a manufacturer of surgical equipment held on 5 August 2025, para. 17.
([68]) See responses to Commission questionnaire to competitors, question D.B.3.
([69]) See Meddevicetracker: "*Market for Robotically Assisted Surgical Devices US, 5 Euro, Japan, and RoW May 2023*".
([70]) See Meddevicetracker: "*Market for Robotically Assisted Surgical Devices US, 5 Euro, Japan, and RoW May 2023*", Section 3.2.

holding shares of less than 4% each—and noting that "*Intuitive is strengthening its position in surgical robotics with the launch of the Da Vinci 5 system*." ([71])

(75) The results of the market investigation and third-party market reports therefore suggest that Intuitive's market share in RAS equipment is […] higher than it estimates, and in view of its current installed base likely […] in the EEA and in each of the EEA Territories.

(76) On the downstream market for the distribution of medical devices, the Target's position is relatively small—below 5% in each of the EEA Territories according to the Notifying Party's estimates. ([72]) There are many other distributors active in the distribution of medical devices more broadly, including Bracco, Movi, Gada, Gruppo Medica, Fora Healthcare Provider, and Meditalia in Italy; Krypton Chemist in Malta; Palex, Prim, and Izaza Scientific in Portugal and Spain; and Surgical Doo, Mediasi, and Mark Medical Doo in Slovenia. ([73]) There are also a number of manufacturers that use direct distribution channels. ([74])

5.3.2. Input foreclosure

5.3.2.1. Notifying Party's views

(77) As regards the ability of the merged entity to engage in an input foreclosure strategy, the Notifying Party argues that the merged entity would not have the ability to engage in input foreclosure.

(78) Today Intuitive only supplies its RAS equipment through AB Medica in the EEA Territories. As a result, none of AB Medica's competitors depends on Intuitive's RAS equipment for its business because they do not currently supply it. The Notifying Party therefore submits that Intuitive's RAS equipment is not an important input for rivals to compete in the downstream market for the distribution of medical devices within the meaning of paragraph 34 of the Non-Horizontal Merger Guidelines. Moreover, the Notifying Party submits that, because of the existing exclusive distribution agreement, the Transaction will not change the current competitive situation in the downstream market.

(79) As regards the incentive of the merged entity to engage in an input foreclosure strategy, the Notifying Party argues that, in light of the existing exclusive distribution agreement, the Transaction does not change Intuitive's incentives to foreclose the Target's competitors in the downstream market. Intuitive already only supplies its RAS equipment through the Target.

(80) As regards the impact a potential input foreclosure strategy would have on the market, the Notifying Party argues that, in light of the lack of ability and incentive, the Transaction will not have any impact on competition. The Notifying Party submits that the Transaction will not result in increased prices or any other impact on effective competition in the downstream market because it does not change the *status quo*. In any event, the Notifying Party notes that there are no other

([71]) *Ibid.*

([72]) As the market definition has been left open, the relevant market could also be as narrow as the distribution of RAS equipment. In that case, the Target's position would broadly mirror Intuitive's market share in each of the EEA territories, given that the Target is the exclusive distributor of Intuitive's Da Vinci system. However, even on such a narrow market definition, the Transaction would not raise competition concerns, for the reasons outlined in Sections 5.3.2 and 5.3.3 below.

([73]) See Form CO, para. 101.

([74]) See minutes of a call with a manufacturer of surgical and RAS equipment held on 13 August 2025, para. 4. See also responses to Commission questionnaire to competitors, question E.B.5.1.

distributors competing with the Target who distribute Intuitive's products, and this will not change post-Transaction.

5.3.2.2. Commission assessment

(81) The Commission does not consider that the Transaction will give rise to input foreclosure concerns for the following reasons.

(82) *First*, the merged entity is unlikely to have the ability to foreclose downstream distributors of medical devices, despite its strong market position. As explained in paragraphs (73)–(75) above, the market investigation indicated that Intuitive is the largest supplier of RAS equipment in the EEA and in the EEA Territories, with several respondents describing it […]. ([75]) Respondents did however note that there are alternative RAS systems in development, which would come to market in the coming years and could become a credible constraint, including CMR Surgical's Versius and Medtronic's Hugo. ([76]) However, respondents noted that once a hospital has invested in a particular RAS system, switching to another RAS is difficult. In response to the market investigation, hospitals indicated that while they could switch to another RAS system, this would require significant time, investment, and training for surgeons. ([77]) Nevertheless, while the preceding analysis highlights the evolution of the market and Intuitive's position, the Commission considers that Intuitive cannot foreclose any distributors, because pre-Transaction Intuitive only supplies its RAS equipment through AB Medica in the EEA Territories, and only this activity will be transferred to the Target. None of the Target's competitors on the downstream market for the distribution of medical devices depend on Intuitive's RAS equipment for their distribution business and the Transaction will therefore not change the current competitive situation downstream. Respondents to the market investigation also confirmed that the Target's distribution activities in RAS equipment are exclusive to Intuitive and that they do not rely on Intuitive's input. ([78])

(83) *Second*, the Transaction will not change Intuitive's incentives regarding foreclosure of the Target's rivals either, because at present Intuitive does not use any other distributors and so Intuitive switching from using a distributor to direct sales (which is the effect of the Transaction) will not impact downstream competition.

(84) *Finally*, with respect to the possible impact of the Transaction, consistent with the above, the majority of respondents to the Commission's market investigation considered that the likely impact would be neutral or positive in the EEA and in each of the EEA Territories. ([79])

([75]) See responses to Commission questionnaire to competitors, question D.B.3. See also minutes of a call with a manufacturer of surgical and RAS equipment held on 13 August 2025, para. 7 and minutes of a call with a manufacturer of surgical and RAS equipment held on 5 August 2025, para. 4.

([76]) See responses to Commission questionnaire to competitors, question D.B.2.

([77]) See responses to Commission questionnaire to competitors, question D.B.6. See also minutes of a call with a manufacturer of surgical and RAS equipment held on 13 August 2025, para. 11.

([78]) See responses to Commission questionnaire to competitors, question E.B.1.1. See also minutes of a call with a manufacturer of surgical and RAS equipment held on 13 August 2025, para. 13.

([79]) See responses to Commission questionnaire to competitors, questions G.1–5 and H.1–5. See also minutes of a call with a manufacturer of surgical and RAS equipment held on 13 August 2025, para. 15 and minutes of a call with a downstream supplier of components of EasyKits held on 7 August 2025, para. 17.

5.3.2.3. Conclusion on input foreclosure

(85) In light of the foregoing, given that the merged entity would be unlikely to have the ability to engage in an input foreclosure strategy and considering the limited effect such a strategy would have, the Commission concludes that the Transaction is unlikely to give rise to serious doubts as to its compatibility with the internal market and with the EEA Agreement as a result of non-horizontal effects in the form of input foreclosure of RAS equipment for distributors of such equipment in the EEA Territories or the EEA more broadly.

5.3.3. Customer foreclosure

5.3.3.1. Notifying Party's views

(86) As regards the ability of the merged entity to engage in a customer foreclosure strategy, the Notifying Party argues that the merged entity would have no ability to foreclose Intuitive's rivals in the upstream market by eliminating an important distribution channel for them. The Notifying Party submits that none of Intuitive's competitors upstream rely on the Target for their distribution of RAS equipment (or surgical equipment more broadly) in the EEA Territories because the Target exclusively distributes Intuitive's RAS equipment and for mixed products no competitor relies on AB Medica as its only or principal distributor. In any event, the Target holds a limited position downstream, with shares in each of the EEA Territories below 5%.

(87) As regards the incentive of the merged entity to engage in a customer foreclosure strategy, the Notifying Party argues that the merged entity would have no incentive to foreclose upstream competitors post-Transaction. The Notifying Party submits that the merged entity will not be able to benefit from possibly higher prices in the upstream market as a result of possible foreclosure of upstream rivals because Intuitive's RAS equipment will continue to face competitive constraints from rivals' RAS devices. In any event, the lack of ability as a result of the exclusive distribution agreement between Intuitive and AB Medica means that the merged entity would also not have any incentive, as the *status quo* pre-Transaction will not change. In addition, the manufacturers who sell (non-surgical) equipment through the Target today would be able to continue distributing their products post-Transaction through the remaining capabilities of AB Medica.

(88) As regards the impact a potential customer foreclosure strategy would have on the market, the Notifying Party argues that any attempt to foreclose customers (for which the merged entity has no ability or incentive) would also have no impact on effective competition in the manufacture and sale of RAS equipment. Post-Transaction, after the Target's activities are integrated with Intuitive, AB Medica will continue to operate as an independent undertaking distributing for third parties in each of the EEA Territories. Intuitive would not gain any control over nor prevent these activities.

5.3.3.2. Commission assessment

(89) The Commission does not consider that the Transaction will give rise to customer foreclosure concerns for the following reasons.

(90) *First*, the merged entity would lack the ability to engage in customer foreclosure. The Target does not distribute RAS equipment of any of Intuitive's competitors and this will not change post-Transaction. The Target will also not distribute any

other surgical equipment post-Transaction, with any such distribution business being retained by AB Medica.([80]) Accordingly, no third-party suppliers of products that compete or may compete with Intuitive's RAS equipment are at risk of foreclosure. Post-Transaction, these suppliers will continue to be able to turn to the distributors they relied on previously (the market investigation confirmed the presence of alternative distributors) ([81]) and respondents to the market investigation also confirmed that a manufacturer could switch from using a distributor to engaging in direct sales relatively easily and that this could also be beneficial to their business. ([82]) Another manufacturer of RAS equipment also explained that, generally, when a manufacturer moves from using a distributor to selling directly, prices tend to drop because the distributor's margin is eliminated. ([83]) As a result, even if the Target was distributing RAS equipment for Intuitive's rivals, those rivals would still have other routes to market open and available to them in the event that one distributor would cease supplying.

(91) *Second*, the Transaction will not affect the merged entity's incentives to engage in a customer foreclosure strategy, as such a strategy is implausible given that the scope of the Transaction means that no competing suppliers rely only or mainly on the Target to distribute their RAS or other surgical equipment.

(92) *Finally*, with respect to the possible impact of the Transaction, consistent with the above, the majority of respondents to the Commission's market investigation considered that the likely impact would be neutral or positive in each of the EEA Territories. ([84]) For instance, one supplier of high-pressure waterjet-based robotic surgical device for the treatment of prostate conditions and which is also distributed by AB Medica in Italy (but likely does not compete with Intuitive's RAS systems according to the market investigation) ([85]) also specifically stated that they do not see any impact on their business, which is consistent with the Notifying Party's explanation that this product will continue to be distributed by the retained AB Medica business. ([86])

5.3.3.3. Conclusion on customer foreclosure

(93) In light of the foregoing, given that the merged entity is unlikely to have the ability or incentive to engage in a customer foreclosure strategy or have significant adverse effects should such a strategy be adopted, the Commission concludes that the Transaction is unlikely to give rise to serious doubts as to its compatibility with the internal market and with the EEA Agreement as a result of non-horizontal effects in the form of customer foreclosure of rival suppliers of surgical

([80]) For completeness, the risk of customer foreclosure is assessed with respect to the upstream manufacture and supply of RAS equipment only, and not with respect to any mixed products. This is because the merged entity's distribution of mixed products following the Transaction will only take place on a limited and temporary basis to fulfil existing contracts (suppliers of mixed products can post-Transaction continue to rely on AB Medica and other distributors) and it will not be active in any upstream markets for manufacturing and supplying mixed products, meaning it would lack any ability or incentive to foreclose suppliers of mixed products. The question of mixed contracts is further discussed in the conglomerate assessment (see section 5.4).

([81]) See responses to Commission questionnaire to competitors, question E.B.3.

([82]) See responses to Commission questionnaire to competitors, question E.B.5.1.

([83]) See minutes of a call with a manufacturer of surgical equipment held on 5 August 2025, para. 16.

([84]) See responses to Commission questionnaire to competitors, questions G.1–5 and H.1–5.

([85]) The majority of respondents to the market investigation indicated that such high-pressure waterjet-based devices are unlikely to compete with RAS equipment, see responses to Commission questionnaire to competitors, question D.A.12.

([86]) Email from supplier of high-pressure waterjet-based equipment, dated 9 September 2025.

equipment, and RAS equipment in particular, in the EEA Territories or the EEA more broadly.

5.4. Conglomerate effects

5.4.1. Parties' activities

(94) As mentioned above, the perimeter of the Transaction also potentially includes some contracts governing both Intuitive's RAS equipment and the supply of non-Intuitive medical equipment (ancillary to Intuitive's RAS equipment) to hospitals in the EEA Territories ("mixed contracts"). This equipment comprises: […]. The merged entity will distribute these products until the end of the mixed contracts, but will not be active in distributing these mixed products to any new customers or under any new contracts. Conglomerate effects could arise from the distribution of these mixed products.

5.4.2. Notifying Party's views

(95) As regards the ability of the merged entity to engage in a conglomerate foreclosure strategy, the Notifying Party argues that the merged entity would have no ability to tie or bundle Intuitive RAS equipment with mixed products such as EasyKits. Hospitals as customers, both public and private, exercise significant buyer power: public hospitals define their requirements in tender documentation, while private hospitals select mixed contracts only after reviewing offers from multiple vendors. Also, the Target does not currently tie or bundle these products, with approximately […]% of Intuitive RAS sales in 2024 occurring without accompanying […]. Rival kit suppliers could also partner with surgical equipment manufacturers to offer complete solutions, mitigating any potential ability of the combined entity to foreclose competition. ([87])

(96) As regards the incentive of the merged entity to engage in a conglomerate foreclosure strategy, the Notifying Party argues that it has no incentive to foreclose rival kit suppliers through tying or bundling. Mixed contracts will continue only for their remaining duration (if hospitals so choose), and Intuitive does not intend to participate in future calls for tenders for mixed products. ([88])

(97) As regards the impact of a potential conglomerate foreclosure strategy, the Notifying Party argues that any attempt to foreclose rival suppliers would have no impact on effective competition. To the extent that the merged entity will inherit any mixed contracts, these are limited in duration. Other than this legacy business, the merged entity will not provide any of the mixed products, and so will not be able to tie or bundle any such products post-Transaction. As regards EasyKits specifically, customized kits are required for all surgical procedures, while Intuitive's RAS is used only in a small minority. […]. Any foreclosure would also be temporary, limited to the duration of existing mixed contracts. ([89])

5.4.3. Commission's assessment

(98) The Commission considers that the Transaction does not give rise to concerns with respect to any possible conglomerate relationships, for the following reasons:

([87]) Form CO, para. 148.
([88]) Form CO, para.149.
([89]) Form CO, para.150.

(99) *First*, the merged entity will not have the ability to engage in a tying or bundling strategy with respect to the mixed products. The merged entity will continue to supply the mixed products to existing customers only until the expiration of the relevant contracts, […]. ([90]) As a result, the Target will not be active in the manufacture or distribution of these mixed products post-Transaction, which eliminates the scope for foreclosure because the Parties cannot commit to making their tying or bundling strategy a lasting one. ([91])

(100) Moreover, the market investigation indicates that, while hospitals may procure RAS systems together with mixed products (such as drapes, insufflation systems, patient positioning devices, surgical tables, and sterilisation baskets), respondents largely confirmed that, in practice, hospitals alone decide, based on their needs, whether to include RAS and other ancillary surgical equipment in the same tender or separately. One market participant noted that "*Hospitals decide tender specifications and needs*" while another stated that "*the buyer has the option to choose whether to purchase everything from a single supplier or separate the supplies of individual devices*", and a third explained that "*RAS equipment is too specific an item to be mixed in a tender with other equipment*". Another confirmed that "*hospitals can determine the scope of the tender*". As a result, the merged entity is unlikely to be able to foreclose suppliers of mixed products through tying or bundling, as hospitals retain full discretion over the structure of their tenders. ([92])

(101) *Second,* the merged entity will not have the incentive to engage in a tying or bundling strategy with respect to the mixed products, as it will only supply existing customers until the abovementioned contract expiry and will not be active thereafter post-Transaction. It therefore would not be in a position to tie or bundle them, nor would it gain any benefit from attempting to do so.

(102) *Finally*, with respect to the possible impact of the Transaction, consistent with the above, the majority of respondents to the Commission's market investigation considered that the likely impact on mixed products would be neutral or positive in each of the EEA Territories. ([93])

5.4.4. Conclusion on conglomerate effects

(103) In light of the foregoing, given that the merged entity would be unlikely to have the ability or incentive to engage in a tying or bundling strategy with respect to the mixed products and considering the limited effect such a strategy would have, the Commission concludes that the Transaction is unlikely to give rise to serious doubts as to its compatibility with the internal market and with the EEA Agreement as a result of any conglomerate effects.

([90]) Only a small minority of mixed contracts are anticipated to expire in or after 2030. Form CO, footnote 104.

([91]) For completeness, AB Medica assembles and sells customised EasyKits made from third-party components; the Target does not manufacture any of these components but simply organizes them into a single offering. As with all non-Intuitive mixed products included in the Transaction, Intuitive will supply […] only for a limited period under existing mixed contracts. The […] business itself will remain with AB Medica.

([92]) See responses to Commission questionnaire to competitors, question F.3.

([93]) In Spain, a majority of respondents considered there could be a negative impact, but they did not provide any justification indicating a tying or bundling concern or any rationale supporting this conclusion. See responses to Commission questionnaire to competitors, questions G.1–5 and H.1–5.

6. CONCLUSION

(104) 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.

For the Commission

(Signed)
Teresa RIBERA
Executive Vice-President