

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 2262

8 July 2022

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

THERMO FISCHER SCIENTIFIC INC.

AND

PPD, INC.

CASE NUMBER: 2021AUG0009

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions as set out below:

1. On 10 August 2021, the Competition Commission ("Commission") received notice of an intermediate merger whereby Thermo Fisher Scientific Inc. ("Thermo Fisher") intends to acquire control over PPD Inc. ("PPD").
2. Thermo Fisher is a public company in the United States of America ("USA"). Thermo Fisher is a global manufacturer and supplier of a broad range of analytical, research and bioprocessing products and pharmaceutical contract development and manufacturing services.
3. PPD is a public company in the USA. PPD is a contract research organization (CRO) that supports pharmaceutical and biotech companies (also referred to as 'sponsors') in the organization and evaluation of, *inter alia*, clinical trials.
4. The Commission considered the activities of the merging parties and found that they overlap vertically as Thermo Fisher provides inputs such as (i) clinical trial packaging and (ii) clinical

supply of storage, distribution and other logistics services to {CONFIDENTIAL}. Without definitively concluding, the Commission assessed the following markets:

- 4.1. The national upstream market for the provision of clinical trial packaging;
- 4.2. The national upstream market for the provision of clinical supply storage, distribution, and other logistics services; and
- 4.3. The national downstream market for the provision of clinical trials.

Input foreclosure

5. With regard to the input foreclosure assessment the Commission found that Thermo Fisher will continue to face competition from other viable market participants in the provision of upstream clinical trial packaging, such as Catalent, Almac, Sharp and PCI and others. Similarly, as regards the upstream provision of clinical supply storage, distribution, and other logistics market, the Commission found that Thermo Fisher will be constrained by alternatives such as UPS, DHL, FedEx, Kuehne + Nagel, World Courier, Cryoport, Catalent, Almac, Sharp, and PCI.

Customer foreclosure

6. The Commission found that PPD competes with several global CROs such as ICON, Parexel, COVANCE, IQVIA, PRA Health Sciences and Syneos in the supply of CRO services. Given the size and number of alternative CROs, the Commission found it unlikely that the merged entity would be able to foreclose upstream rivals with significant anticompetitive effect.
7. Considering the above, the Commission found that the proposed transaction is unlikely to raise substantial foreclosure concerns.
8. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

9. Given that the merging parties were unable to provide an unequivocal undertaking on the merger's impact on employment, the Commission and the parties have agreed that the proposed merger is subject to the employment condition attached as **Annexure A**.
10. The proposed transaction does not raise any other public interest concerns.
11. The Commission approves the proposed transaction subject to the conditions attached in **Annexure A**.

ANNEXURE A
THERMO FISCHER SCIENTIFIC INC.

AND
PPD, INC.

CASE NUMBER: 2021AUG0009

CONDITIONS

1. DEFINITIONS

1.1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.2. “**Acquiring Firm**” means Thermo Fisher Scientific Inc.;
- 1.3. “**Act**” means the Competition Act, No. 89 of 1998 (as amended);
- 1.4. “**Approval Date**” means the date referred to in the Commission’s merger clearance certificate (Form CC15) in respect of the Merger;
- 1.5. “**Commission**” means the Competition Commission of South Africa;
- 1.6. “**Commission Rules**” means the Rules for the Conduct of Proceedings in the Commission;
- 1.7. “**Conditions**” means these conditions;
- 1.8. “**Days**” mean any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;

- 1.9. **“Implementation Date”** means the date occurring after the Approval Date, on
- 1.10. **“LRA”** means the Labour Relations Act, No. 66 of 1995, as amended;
which the Merger is implemented by the Merging Parties;
- 1.11. **“Merger”** means the acquisition of control by the Acquiring Firm over the Target Firm, which constitutes an intermediate merger for the purposes of the Act;
- 1.12. **“Merged Entity”** means the entity that will result from the Merger between the Merging Parties;
- 1.13. **“Moratorium”** means the period between the Approval Date and the
- 1.14. Implementation Date and, thereafter, a period of 2 (two) years from the Implementation Date;
- 1.15. **“Merging Parties”** mean the Acquiring Firm and Target Firm;
- 1.16. **“South Africa”** means the Republic of South Africa;
- 1.17. **“Target Firm”** means PPD, Inc.; and
- 1.18. **“Tribunal”** means the Competition Tribunal of South Africa.
- 1.19. **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal.

2. RECORDAL

- 2.1. On 10 August 2021, the Merging Parties notified the Merger to the Commission.
- 2.2. The Commission found that the Merging Parties were not able to provide a definitive statement that the Merger would not result in any Merger-related retrenchments in South Africa. The Acquiring Firm tendered the Conditions to address any potential concerns in this regard.

3. CONDITION TO THE APPROVAL OF THE MERGER: EMPLOYMENT

- 3.1. The Merging Parties shall not retrench any employees in South Africa as a result of the Merger, during the Moratorium period.

3.2. For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; or (ii) voluntary early retirement packages, (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

4. MONITORING OF COMPLIANCE WITH THE CONDITION

- 4.1. The Merging Parties shall circulate a copy of the Conditions to all their employees in South Africa and their relevant trade unions or employee representatives within 5 (five) Days of the Approval Date.
 - 4.2. As proof of compliance thereof, a director of one of the Acquiring Firm's South African subsidiaries and a director of one of the Target Firm's South African subsidiaries shall each within 10 (ten) Days of circulating the Conditions, submit affidavits attesting to the circulation of the Conditions to their employees in South Africa and provide a copy of the notice that was sent to the employees, respectively.
 - 4.3. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective.
 - 4.4. The Merged Entity shall, on the first and second anniversary of the Implementation Date submit a report confirming compliance with Conditions **Error! Reference source not found.** and **Error! Reference source not found.**
 - 4.5. Each report submitted in terms of paragraph 4.4 shall be accompanied by an affidavit of a director of one of the Acquiring Firm's South African subsidiaries confirming the accuracy of the information contained in the report and attesting to the compliance with the Conditions.
 - 4.6. The Commission may, for the duration of the Conditions, request additional information on compliance with these Conditions.
 - 4.7. Any employee of either of the Merging Parties who believes that the Merging Parties have not complied with or have acted in breach of these Conditions may approach the Commission.
-

5. APPARENT BREACH

5.1. Any complaint received by the Commission alleging a breach of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules read with Rule 37 of the Tribunal Rules.

6. VARIATION

6.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

7. GENERAL

7.1. All correspondence in relation to these Conditions shall be sent to mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298