



# DETERMINATION OF MERGER NOTIFICATION M/17/026 – NOVACAP/PCAS

## Section 21 of the Competition Act 2002

### Proposed acquisition of sole control of PCAS SA by Novacap SAS

Dated 15 June 2017

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#### Introduction

1. On 15 May 2017, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed acquisition whereby Novacap SAS (“Novacap”) would acquire sole control of PCAS SA (the “Target”).

#### The Proposed Transaction

2. The proposed transaction is to be implemented pursuant to the following two-stage process:
  - First, on or around 19 June 2017, Novacap will carry out a series of acquisitions of the Target’s securities from a number of existing shareholders in the Target, as described further in paragraph 3 of this determination. This series of acquisitions will result in Novacap acquiring at least 50% of the Target’s total issued share capital, which will confer on Novacap sole control of the Target;
  - Second, on or around 20 June 2017, following the acquisition by Novacap of sole control of the Target, Novacap plans to file a mandatory public tender offer with the French Financial Markets Authority for the acquisition of the remainder of the Target’s shares.
3. The parties state in the notification that, on or around 19 June 2017, Novacap will acquire:
  - 29.84% of the issued share capital of the Target from, collectively, Eximium and Crusader<sup>1</sup> pursuant to a share purchase agreement dated 15 May 2017 (the “SPA”);<sup>2</sup>

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<sup>1</sup> Eximium is a French simplified joint stock company. Crusader is a Luxembourg company limited by shares.

<sup>2</sup> The SPA is between Eximium, Crusader and Novacap. The parties informed the Commission that completion of the acquisition by Novacap of 29.84% of the issued share capital of the Target from Eximium and Crusader will be conditional upon Novacap acquiring a total shareholding of at least 50% of the Target in the first stage of the proposed transaction.



- 15.39% of the issued share capital of the Target from, collectively, Anblan, Mr. Christian Moretti, Mr. Philippe Delwasse, Mr. Eric Moissenor, and Mr. Vincent Touraille according to a put agreement dated 15 May 2017; and
  - Approximately 7% of the issued share capital of the Target from other minority shareholders according to a series of other put agreements dated 15 May 2017.
4. Following implementation of the proposed transaction, Novacap will exercise sole control over the Target.

#### **The Undertakings Involved**

##### *Eurazeo SA*

5. Eurazeo SA (“Eurazeo”) is a French investment company, listed on the Euronext stock exchange. Eurazeo holds 66.9% of the issued share capital of Novacap and has sole control over Novacap.
6. The parties state in the notification that the following three portfolio companies controlled by Eurazeo generated turnover in the State in 2016:
- Fintrax Group Holding Limited: the parent company of Premier Tax Free 2 Limited, which provides services to international travellers to enable them to claim back VAT on retail purchases;
  - Novacap: a global manufacturer and distributor of active pharmaceutical and essential chemical ingredients (which will be discussed in detail in the next section of the determination); and
  - CPK Group: a group of companies specialised in the manufacture of chocolate products and confectionary, which acquired certain assets from Mondelez International Limited. Its portfolio of brands includes *Carambar*, *Poulain*, *Krema*, *La Pie Qui Chante* and *Terry’s*.
7. For the financial year ending 2016, Eurazeo’s worldwide turnover was approximately €[4-5] billion, of which approximately €[...] million was generated in the State.

##### *Novacap*

8. Novacap, a France-based chemical company, is a manufacturer and distributor of chemicals used in everyday products, such as pharmaceutical, healthcare, food and feed, cosmetics and fragrances, homecare and environmental products. Novacap operates three business divisions: pharmaceutical & cosmetics, mineral specialities and performance chemicals.
9. Novacap’s pharmaceutical & cosmetics division manufactures and distributes active pharmaceutical ingredients (“APIs”) and specialty chemicals, which are mainly used as intermediate products in the pharmaceutical and cosmetics industries.



10. Novacap's mineral specialities division produces and distributes sodium bicarbonate, sodium carbonate, sodium silicate and nabions.
11. Novacap's performance chemicals division is an organic chemical intermediates business that specialises in the production of phenol, phenol specialties and a full range of oxygenated solvents (e.g., acetone, isopropanol, isopropyl acetate) and is a distributor of chlorphdric acid.
12. Novacap sold products to pharmaceutical laboratories in the State through the following three entities in 2016:
  - Novacyl SAS, a company within Novacap's pharmaceutical & cosmetics division, has a strong presence in the production and sale of salicylic acid, acetylsalicylic acid and paracetamol in the European and global market. In 2016, Novacyl SAS generated approximately €[...] million turnover from the sale of [...] in the State;
  - Cu Chemie Uetikon, a company within Novacap's pharmaceutical & cosmetics division, covers most of organic chemistry, and is especially active in the production of Amino Acid Buildings Blocks (AABB), Fine Chemical Intermediates (FCI), and APIs. In 2016, Cu Chemie Uetikon generated approximately €[...]million turnover from the sale of APIs in the State; and
  - Novacarb SPAS, a company within Novacap's mineral specialities division, specialises in the manufacture and distribution of commodity chemical products, in particular sodium bicarbonate and sodium carbonate. In 2016, Novacarb SPAS generated approximately €[...] turnover from the sale of [...] in the State.
13. For the financial year ending 2016, Novacap's worldwide turnover was approximately €[...] million, of which approximately €[...] million was generated in the State.

#### *The Target*

14. The Target is a French limited liability company active in two main areas, namely: pharmaceutical synthesis and the production of specialty chemicals. It has a physical presence in Canada, the United States, France, Germany, Finland and China.
15. Pharmaceutical synthesis involves the development and manufacture of APIs and semi-finished products. The production of specialty chemicals comprises: (a) the production of performance additives for industrial lubricants for metalwork and metal protection; and (b) the production of special polymers and complex molecules for cosmetics and microelectronics as well as the development of biotechnological solutions and insulating materials.
16. The Target generates turnover in the State through the manufacture and sale of APIs and certain fine specialty chemicals which it supplies to pharmaceutical laboratories in the State.
17. For the financial year ending 2015, the Target's worldwide turnover was approximately €191.9 million, of which approximately €[...] million was generated in the State.



### Rationale for the Proposed Transaction

18. The parties state in the notification:

*“The Proposed Transaction aims at expanding PCAS’ and Novacap’s API and specialty chemicals offerings. [...]The Proposed Transaction will enable the parties to compete more effectively on three continents – Europe, Asia, and North America, increase their R&D & innovation capabilities, better serve their clients and achieve improved economies.*

*[...]”*

### Third Party Submissions

19. No submission was received.

### Competitive Analysis

20. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission notes that the European Commission has previously concluded that each individual API constitutes a separate product market<sup>3</sup> and that each chemical product constitutes a separate product market.<sup>4</sup> The Commission considers that there are no reasons to depart from the European Commission’s view on the relevant product market for the purpose of assessing the competitive impact of the proposed transaction.

21. Furthermore, in this instance, it is not necessary for the Commission to define the precise relevant markets because doing so will not alter the Commission’s assessment of the likely competitive effects of the proposed transaction in the State.

### Horizontal Overlap

22. There is a horizontal overlap in the State between the activities of Novacap and the Target as both are involved in the manufacture and supply of APIs and of specialty chemicals.

23. Table 1 below details the products supplied by Novacap to customers in the State between 2014 and 2017 and the specific application(s) of each such product:

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<sup>3</sup> See, for example, Mylan/Perrigo, Case No. M/7645 which can be accessed at [http://ec.europa.eu/competition/mergers/cases/decisions/m7645\\_20150729\\_20310\\_4436524\\_EN.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m7645_20150729_20310_4436524_EN.pdf)

<sup>4</sup> See, for example, COMP/M.3125 Huntsman/Matlinpatterson/Vantico which can be accessed at [http://ec.europa.eu/competition/mergers/cases/decisions/m3125\\_en.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m3125_en.pdf) and COMP/M.4179 Huntsman/CIBA TE Business which can be accessed at [http://ec.europa.eu/competition/mergers/cases/decisions/m4179\\_20060630\\_20310\\_en.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m4179_20060630_20310_en.pdf)



**Table 1: Novacap – Products supplied to customers in the State between 2014 and 2017**

	Products <sup>5</sup>	Application(s) <sup>6</sup>
<b>API</b>	[...]	[...]
	[...]	[...]
	[...]	[...] <sup>7</sup>
	[...]	[...] <sup>8</sup>
	[...]	[...]
	[...]	[...]
	[...]	[...]
<b>Non API(Speciality Chemicals)</b>	[...]	[...] <sup>9</sup>
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]

Source: The Commission based on information provided by the parties

24. Table 2 below details the products supplied by the Target to customers in the State between 2014 and 2017 and the specific application(s) of each such product:

**Table 2: The Target– Products supplied to customers in the State between 2014 and 2017**

	Products <sup>10</sup>	Application(s) <sup>11</sup>

<sup>5</sup> Some of the products listed in Table 1 are supplied by Novacap in the State in one year during the period 2014-2017 but not in all years within the same period.

<sup>6</sup> Novacap informed the Commission that the application(s) for each product sold in the State is provided to the best of Novacap's knowledge. Novacap does not always have visibility as to the precise application of each product.

<sup>7</sup> [...] is a contract-manufactured API, the production of which has ceased for two years or more.

<sup>8</sup> [...] is a contract-manufactured API, the production of which has ceased for two years or more.

<sup>9</sup> The manufacture of [...] ceased in 2014.

<sup>10</sup> Some of the products listed in Table 2 are supplied by the Target in the State in one year during the period 2014-2017 but not in all years during the same period.

<sup>11</sup> The parties informed the Commission that the application(s) for each product sold in the State is provided to the best of their knowledge.



<b>API</b>	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
<b>Non API (Specialty Chemical)</b>	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]
	[...]	[...]

Source: The Commission based on information provided by the parties<sup>12</sup>

25. The parties informed the Commission that Novacap and the Target supply different and non-substitutable APIs and specialty chemicals in the State. More particularly, the parties, at the request of the Commission, confirmed that the products supplied by Novacap and the Target to customers in the State during the period 2014-2017 are neither the same nor substitutable. As illustrated in both Table 1 and Table 2 above, the products supplied by each party in the State are used for different applications.
26. The Commission therefore considers that the proposed transaction does not raise any horizontal competition concerns in the State.

#### *Vertical Relationship*

27. There is no vertical relationship between the activities of Novacap and the Target in the State.<sup>13</sup> The parties further informed the Commission that no vertical or conglomerate relationship exists between the parties with respect to the products they supplied to customers in the State between 2014 and 2017 as outlined in Table 1 and Table 2.<sup>14</sup>

<sup>12</sup> Parties state that the application for the Target's products sold in the State are provided to the best of the parties' knowledge. The parties do not always have visibility as to the precise application of each product.

<sup>13</sup> The parties informed the Commission that outside the State, the Target purchases two products [...] from Novacap. However, Novacap makes minimal sales of these two products in the European Union and Novacap's sales of both products to the Target is minimal.

<sup>14</sup> 1 June 2017 and 8 June 2017.



Therefore, the proposed transaction does not raise any vertical competition concerns in the State.

28. In conclusion, the Commission considers that the result of the proposed transaction will not be to substantially lessen competition in the manufacture and supply of APIs and of specialty chemicals in the State.

#### **Ancillary Restraints**

29. No ancillary restraints were notified.



### **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed transaction, whereby Novacap SAS would acquire sole control of PCAS SA, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Patrick Kenny**  
**Member**  
**Competition and Consumer Protection Commission**