

Takeover of Grail by Illumina: the *Autorité* welcomes the ruling by the General Court of the European Union,

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Takeover of Grail by Illumina: the *Autorité* welcomes the ruling by the General Court of the European Union, which confirms that a national competition authority may refer the control of a transaction below the merger thresholds to the European Commission on the basis of Article 22 of Regulation 139/2004.

The *Autorité* welcomes today's ruling by the General Court of the European Union in case T-227/21 Illumina v. European Commission. In this ruling, the Court upheld the Commission's decision accepting the referral request by the *Autorité de la concurrence*, joined by several Member States of the European Union and the European Economic Area (Belgium, Greece, Iceland, Netherlands, Norway) for it to control the acquisition of Grail by Illumina.

The Court recalls that on the basis of Article 22 of Regulation 139/2004, national competition authorities may refer mergers below the national and European notification thresholds to the European Commission for examination when the merger affects trade between Member States and threatens to significantly affect competition in the territory of the Member State concerned.

This is the first application of Article 22 since Margrethe Vestager (Executive Vice-President of the European Commission) announced a change of approach to controlling "below threshold" transactions.

This new approach to Article 22 gives full scope to this mechanism and is a response to the requests expressed by several players, including the French *Autorité* to mobilise the merger control tool at the European level in order to more effectively combat predatory or consolidating acquisitions. The aim is to better control acquisitions of high-value companies in fields such as digital innovation, healthcare and biotech, which can consolidate the market power of already powerful or dominant companies while escaping control by competition authorities.

The implementation of Article 22 had been requested for several years by the *Autorité*, which considered that it was necessary to strengthen European merger control to be able to examine a number of "below threshold" transactions and that this mechanism gives current European law the necessary flexibility to target below-threshold mergers that merit examination under merger control.

The referral by the *Autorité* responds fully to these issues, as it involves the takeover by a powerful U.S. healthcare company of an innovative company working on the development of a cancer screening blood test based on genomic sequencing technology.

The Court's decision is not final. An appeal on points of law may be lodged with the Court of Justice of the European Union within two months and ten days of notification.

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