

[Company] believes the merger of Illumina with PacBio will result in a substantial lessening of competition (SLC) in the sequencing market as a whole.

Though [Company] agrees with Oxford Nanopore Technologies' Views on Illumina's Revised Remedies Proposal of 19 November 2019 and ONT's associated Annex of 19 November 2019 in their entirety, [Company] also believes that the scope of the proposed limited field licensing remedy remains too narrow to remedy the SLC.

As the proposed merger has undergone regulatory review in both the U.K. and the U.S., Illumina has inked a 15-year partnership agreement with Qiagen under which Qiagen acquires non-exclusive rights to develop and globally commercialize IVD Kits for Illumina's MiSeq™ Diagnostic and NextSeq™ 550 Diagnostic Systems.¹ Qiagen simultaneously discontinued development of its GeneReader short read instrument.² Qiagen's assays are market-leading and widely respected. Thus, the long term agreement and correlated discontinuation of the Qiagen Gene Reader Instrument make consumers more likely to purchase Illumina sequencers to run the Qiagen assays. It is reasonable to extrapolate from the events that Illumina has worked to further reduce sequencing instrument competition while the PacBio merger is under regulatory review.

The parties' offer only allows "single molecule native long read sequencing system" developers a path reducing IP obstacles. Because access to IP constitutes a formidable hurdle to emerging entrants in the sequencing market, the parties' licensing proposal (benefitting, at best, one company) simply does not go far enough to encourage competition. [Company] believes a broader license to both the Illumina and PacBio patent portfolios without field restrictions lessens the impact of the merger on the sequencing market as a whole. Ideally, such a remedy would also include ongoing monitoring to prevent future anticompetitive practices (e.g., discounting, bundling, aggressive litigation tactics).

¹ Qiagen Oct 7, 2019 Press Release, https://corporate.qiagen.com/newsroom/press-releases/2019/20191007_qiagen_illumina_ngs_collaboration

² Qiagen Oct 7, 2019 Press Release, https://corporate.qiagen.com/newsroom/press-releases/2019/20191007_q3_preliminary_sales_and_restructuring_charges