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Illumina Inc

Illumina says EU probe of $8bn Grail deal could hit biotech investment

Chief executive deSouza attacks regulatory intervention over cancer test company

JAMIE SMYTH IN NEW YORK AND **JAVIER ESPINOZA** IN BRUSSELS

The head of Illumina, the world's largest gene sequencing company, has warned that EU attempts to block its $8bn acquisition of cancer-test maker Grail will cost lives and have a chilling effect on biotech investment.

"We can get this test out around the world more quickly and affordably than Grail can on its own," Francis deSouza told the Financial Times.

"There is no question that us acquiring and integrating Grail will save many, many lives. And if we are forced to spin it out, you know, those lives will not be saved."

Illumina's DNA sequencing technology is a component in the cancer detection tests developed by Grail

Illumina, which has a $63bn market capitalisation, is a US-based provider of DNA sequencing technology that is a critical component in the type of multi-cancer early detection tests developed by Grail. US and EU regulators have expressed concerns that Illumina could withhold access to its technology from potential competitors of Grail, limiting competition in the testing market.

DeSouza denied Illumina had any incentive to do this as it earned most of its revenue through sales of its DNA sequencing technology.

He said he was shocked at Brussels' probe as Grail — a company backed by Jeff Bezos and Bill Gates — had no activities in the EU and did not operate in the same market as Illumina. Co-ordination between the European Commission and the US Federal Trade Commission, which launched a lawsuit last year aimed at blocking the deal, was unprecedented, he said.

"I did get asked if this is like the Facebook-Instagram deal and this is nothing like that deal, which is a horizontal merger. They are two social media companies in the same market," he said.

"We're a small company. They're [regulators] looking to make precedent on a small company that they can then use against, you know, bigger companies."

The EU's probe into Illumina's acquisition of Grail is a test case for regulators seeking to see how much they can expand their powers to capture so-called killer acquisitions — a process whereby large market participants use their strong position to buy out rivals before they become serious contenders, undermining competition.

Grail's competitors argue that the deal would leave them unable to compete on fair terms. Illumina denies that the deal represents a killer acquisition as Illumina and Grail are not rivals.

The probe follows a series of acquisitions led by Big Tech — including Facebook's acquisition of WhatsApp and Instagram or Google's acquisition of Fitbit. It comes at a time where European and US regulators are increasingly working in parallel on their scrutiny of potentially problematic transactions.

"This is happening more," said Arman Oruc, a partner in the antitrust and competition practice at Goodwin, a law firm.

"For the FTC it can be more of a convenience that they work shoulder to shoulder with their colleagues in Brussels, and that way they don't need to do as much work to stop the transaction from happening."

Vijay Kumar, analyst at Evercore ISI, said Illumina had taken an aggressive stance against Brussels, most notably by closing the transaction in August before it received clearance from EU or US authorities. The EU has said Illumina could face a fine of up to 10 per cent of global revenues after ordering it to keep Grail separate.

"The company has made a strategic bet on Grail given the size of potential market opportunity — in tens of billions and this has become a very important case for regulators," Kumar said.

DeSouza said he was confident Illumina would prevail in a case launched against the commission at the General Court of the European Union, which argues it has no jurisdiction to investigate the Grail deal. A loss in the case could disrupt global businesses, he said.

"If everybody started doing what the European Commission is doing, you know if China thought, hey, we can assert jurisdiction between the merger of any two companies anywhere in the world . . . then as a business it would be very hard to do any kind of merger because you would need an approval from all 200 countries around the world."

DeSouza said there was a risk that a victory for Brussels would encourage similar interventions in other deals and disrupt the established investment model for biotech companies.

"Venture capitalists know to invest in that model, expecting liquidity through an acquisition. And if you take that away, I think it could impact investment into the space," he said.

Brussels defended its stance in court last month in Luxembourg. Nicholas Khan, of the European Commission Legal Service, told judges it was right for Brussels to take on the case after a referral from the French.