

EN



EUROPEAN COMMISSION
DG Competition

***Case M.7818 - MCKESSON / UDG HEALTHCARE
(PHARMACEUTICAL WHOLESALE AND ASSOCIATED
BUSINESSES)***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 03/03/2016

***In electronic form on the EUR-Lex website under document
number 32016M7818***



EUROPEAN COMMISSION

Brussels, 03.03.2016
C(2016) 1475 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sirs/Mesdames,

Subject: Case M.7818 – McKesson / UDG Healthcare (Pharmaceutical Wholesale and Associated Businesses)
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

- (1) On 14 January 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004³ by which McKesson Deutschland GmbH & Co. KGaA, an entity ultimately owned by the McKesson Corporation ("McKesson", United States) acquires certain businesses ("the Target") from UDG Healthcare plc ("UDG", Ireland), by way of purchase of shares (the "Transaction").⁴

¹ OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

² OJ L 1, 3.1.1994, p.3 ('the EEA Agreement').

³ OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

⁴ Publication in the Official Journal of the European Union No C 20, 21.01.2016, p. 2.

- (2) McKesson is referred to as the "Notifying Party". McKesson and the Target are referred to as the "Parties".

1. THE PARTIES

- (3) **McKesson** operates in the distribution and delivery of pharmaceuticals and medical equipment; medical supply products; and the delivery of healthcare information technology to healthcare organisations.
- (4) **UDG** is a provider of sales and marketing services, wholesaling, medical equipment, packaging and specialist healthcare delivery services.
- (5) **The Target** includes UDG's pharmaceutical wholesaling business in Ireland and the UK, comprising the United Drug Supply Chain Services business and the United Drug Sangers business; TCP, a healthcare services provider in the Republic of Ireland; and MASTA, a travel healthcare business in the UK.

2. THE OPERATION AND THE CONCENTRATION

- (6) On 18 September 2015, the Parties entered into a Share Purchase Agreement, which provides for the sale and purchase of the entire issued share capital of the companies comprising the Target from the various sellers within UDG.
- (7) The operation therefore constitutes a concentration pursuant to Article 3(1)(a) of the Merger Regulation.

3. UNION DIMENSION

- (8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (McKesson: EUR 141 207 million, the Target: EUR [...] million).⁵ Each of them has a Union-wide turnover in excess of EUR 250 million (McKesson: EUR [...] million, the Target: EUR [...] million), but neither of the undertakings concerned achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State.
- (9) The notified operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. REFERRAL TO THE UNITED KINGDOM

- (10) By a letter dated 22 January 2016, the Competition & Markets Authority ("CMA"), on behalf of the United Kingdom, requested the Transaction to be partially referred to it with a view to assessing the effects of the Transaction in the United Kingdom under national competition law, pursuant to Article 9(2)(a) of the Merger Regulation.
- (11) On the same date as this decision and in reply to that request, the Commission addressed to the United Kingdom a decision partially referring the case ("the Referral Decision") for the aspects relating to the impact of the Transaction in the United Kingdom.

⁵ Turnover calculated in accordance with Article 5 of the Merger Regulation.

- (12) Therefore, only the remainder of the Transaction, which concerns Ireland, will be assessed by the Commission in the present decision.
- (13) This decision is without prejudice to the outcome of the proceedings conducted by the CMA in charge of the assessment of the effects of the Transaction on the relevant markets in the United Kingdom.

5. ASSESSMENT

- (14) A vertical relationship arises in Ireland between the Target's activities regarding the wholesale of pharmaceuticals, upstream, and McKesson's retail pharmacy business (Lloyds), downstream.

5.1. Relevant product markets

5.1.1. Wholesale of pharmaceuticals

- (15) The Commission has previously sub-divided the wholesale of pharmaceuticals on the basis of the following three categories:⁶
- a. *Categories of wholesalers* (full-line wholesalers⁷ and short-line wholesalers);⁸
 - b. *Categories of products* (depending on whether the medicine may be sold with prescription or over-the-counter;⁹ whether it is an originator, generic or parallel import medicine; and whether the medicine may be sold in retail pharmacies under the supervision of a pharmacist only, or also in other outlets such as supermarkets);
 - c. *Categories of customers* (retail pharmacies, dispensing doctors¹⁰ and hospitals) due to different purchasing and delivery patterns.¹¹
- (16) In previous decisions, the Commission¹² and the Irish Competition and Consumer Protection Commission ("CCPC")¹³ have also considered a separate market for

⁶ See cases M.4301 – *Alliance Boots/Cardinal Health*; M.6044 – *Alliance Boots/Andrae-Noris Zahn*; M.6033 – *Johnson & Johnson/Crucell*; M.7323 – *Nordic Capital/GHD Verwaltung*; M.7526 – *G.L. Swarovski/Bilfinger/Proficare*; M.7494 – *Brocacef/Mediq Netherlands*.

⁷ A full-line wholesaler undertakes to supply the full complement of prescribable pharmaceuticals.

⁸ A short-line wholesaler does not carry the full complement of prescribable pharmaceuticals. It often concentrates on a range of high volume products and tends to provide a once daily (or less frequent) delivery service to its customers.

⁹ "OTC", that is without prescription.

¹⁰ A dispensing doctor is licensed to dispense pharmaceuticals to patients who live in areas with few or no retail pharmacies.

¹¹ See cases M.4301 – *Alliance Boots/Cardinal Health*; M.7323 – *Nordic Capital/GHD Verwaltung*; M.7494: *Brocacef/Mediq Netherlands*.

¹² See e.g. case M.6044 – *Alliance Boots/Andrae-Noris Zahn*.

¹³ See case M/12/027 – *Uniphar/CMR*.

pharmaceuticals pre-wholesale services (including 3PLs),¹⁴ ultimately leaving the market definition open.

- (17) According to the Parties, a number of full-line wholesalers still operate in the EEA but none exist in the UK or Ireland due to the existence of exclusive arrangements for branded pharmaceuticals. The Parties therefore refer to full-line wholesalers in these countries as broad-line wholesalers.
- (18) For the purpose of this decision, the exact product market definition with regard to the wholesale of pharmaceuticals can be ultimately left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any alternative product market definition.

5.1.2. *Retail pharmacies*

- (19) The Parties submit that, in Ireland, the core business of a retail pharmacy is the dispensing of pharmaceuticals pursuant to prescriptions. The only other significant area of activity for most retail pharmacies is the sale of OTC medicines. Although most other retail pharmacies also sell Health and Beauty (non-pharmaceutical) products, this activity is marginal and ancillary to their dispensing business, and is subject to competition from a large number of other retailers and supermarkets. The Parties submit, therefore, that the relevant product market comprises the retail sale of prescription and OTC pharmaceuticals.
- (20) The Parties note that, in Ireland, there are differences between the dispensing of prescriptions and the sale of OTC medicines, since the retailing of the latter is less tightly regulated and most can be sold through other retail outlets such as supermarkets.
- (21) The Commission has previously considered, without concluding on this point, that the provision of pharmacy services to hospitals present distinct features from community retail pharmacies.¹⁵ It has also segmented the market by categories of products, in particular between prescription and OTC medicines (in a similar way than for the pharmaceutical wholesale market).¹⁶
- (22) For the purpose of this decision, the exact product market definition with regard to retail pharmacies can be ultimately left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any alternative product market definition that is set out above.

¹⁴ A 3PL is a third party logistics supplier licensed to store and transport pharmaceuticals. Pre-wholesalers are 3PLs that receive bulk pallets of pharmaceuticals from manufacturers to a single warehouse site and then deliver smaller volumes to the regional warehouses of wholesalers and directly to large volume purchasers (such as some hospitals).

¹⁵ See case M.7721 – *Celesio/Sainsbury's UK pharmacy business*.

¹⁶ See case M.4301 – *Alliance Boots/Cardinal Health*; M.7494 – *Brocacef/Mediq Netherlands*.

5.2. Relevant geographic markets

5.2.1. Pre-wholesale and wholesale of pharmaceuticals

- (23) In Ireland, the Parties argue that the relevant geographic market is national, given that most wholesalers, including the Target, currently operate at a national level.
- (24) In previous decisions, the Commission consistently considered that pharmaceutical wholesaling is either national or regional (sub-national) in scope, due to the emphasis placed by customers on the frequency and speed of delivery of medical products.¹⁷
- (25) In a previous case,¹⁸ the CCPC considered the relevant geographic markets for pre-wholesaling and wholesaling and proceeded to examine the competitive effects of the proposed transaction on a national basis, whilst noting that it did not need to come to a definitive view on the precise relevant geographic market.
- (26) For the purpose of this decision, the exact geographic market definitions with regard to the pre-wholesale and wholesale of pharmaceuticals can be ultimately left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any alternative geographic market definition that is discussed above.

5.2.2. Retail pharmacies

- (27) The Parties submit that pharmacies in Ireland are subject to specific regulatory and licensing requirements, and market entry and the licensing of retail pharmacies is strictly controlled. However, there are a number of chains with retail pharmacies located throughout Ireland, where decisions are usually taken on a national basis and the same categories of products are dispensed and sold to consumers throughout the country. Most importantly, the regulatory framework regarding the retail sale of pharmaceuticals has a national dimension. Equally, the same categories of products are dispensed and sold to consumers by pharmacies throughout Ireland. The Parties argue that, from a supply-side view, there is cogency in the view that the relevant geographic reference is national.
- (28) The Commission previously considered that the market is national (from a supply-side) or local (from a demand-side).¹⁹ The national character of the market derives from the existence of national chains of pharmacies, national advertising and promoting campaigns as well as from the fact that pricing decisions are usually taken on a national basis. Most importantly, the regulatory framework regarding the retail sale of pharmaceutical products has a national dimension. However, from the demand side, retail pharmacy markets were considered as fundamentally local in nature, e.g. limited to a certain radius around each pharmacy.

¹⁷ See cases M.7721 – *Celesio/Sainsbury's UK pharmacy business*; M.7323 – *Nordic Capital/GHD Verwaltung*; M.7494 – *Brocacef/Mediq Netherlands*.

¹⁸ See case M/12/027 – *Uniphar/CMR*.

¹⁹ See case M.7721 – *Celesio/Sainsbury's UK pharmacy business*; M.7494 – *Brocacef/Mediq Netherlands*.

- (29) The CCPC has recently considered whether the relevant geographic market for the operation of retail pharmacies in Ireland was local, regional, or national.²⁰ In both cases, the CCPC did not need to come to a definitive view on the relevant geographic market, since its conclusion on the competitive impact of the proposed transactions would not change under either geographic market definition.
- (30) For the purpose of this decision, the exact geographic market definition with regard to retail pharmacies can be ultimately left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any alternative geographic market definition that is mentioned above.

5.3. Competitive assessment

- (31) The Notifying Party notes that a wholesaler in Ireland effectively acts as a middleman between the manufacturer and the retail pharmacy or hospital. Indeed, the vast majority of the relevant manufacturer and retail prices and, hence, the corresponding maximum wholesale margin, are regulated. There have been significant and well publicised reductions in the amounts payable by the Irish state under pricing arrangements in recent years.²¹
- (32) The Transaction gives rise to a vertically affected market upstream as the Target is one of the two full/broad-line wholesalers in Ireland (together with Uniphar):

Wholesale supply (value, 2015)		Target	Uniphar	Rest of
Ireland	All Ethicals	[40-50]%	[20-30]%	[30-40]%
	Full-line wholesalers (Ethicals)	[60-70]%	[30-40]%	–

Source: Parties' estimates.

- (33) The Notifying Party confirmed that the market shares would not materially vary for the wholesaling of other products (e.g. for medicines sold OTC, in other outlets such as supermarkets, etc.), if a distinction was made between originator and generic pharmaceuticals, as well as for pre-wholesaling activities.

²⁰ See cases M/15/021 – *Lloyds Pharmacy/Walsh's and Friary Allcare Pharmacies*; M/15/025 – *Lloyds Pharmacy/Dargle Pharmacies*.

²¹ Mostly driven by the recent economic recession experienced in Ireland and the introduction of a significant new piece of legislation (the Health (Pricing and Supply of Medical Goods) Act 2013) which promotes the use of cheaper generic medicines.

- (34) However, the Notifying Party has a very limited position downstream, both in value and number of retail pharmacy outlets:

Retail pharmacy (2015)	Share in value	Share in # of outlets
Boots	[10-20]%	[0-5]% ([...] outlets)
Notifying Party (Lloyds)	[5-10]%	[5-10]% ([...] outlets)
Sam McCauley	[0-5]%	[0-5]% ([...] outlets)
McCabes	[0-5]%	[0-5]% ([...] outlets)
Hickeys	[0-5]%	[0-5]% ([...] outlets)
Stack's	[0-5]%	[0-5]% ([...] outlets)
Cara	[0-5]%	[0-5]% ([...] outlets)
Total²²	EUR 2.7 billion	1,809 outlets

Source: Parties' estimates.

- (35) The Notifying Party therefore represents only [...] outlets out of the 1,809 retail pharmacy outlets in Ireland, which together had a turnover of EUR [...] million (to be compared with a total market of EUR 2,699 million). Given the small size of the Notifying Party's activities downstream, a customer foreclosure strategy appear unlikely. Furthermore, any potential input foreclosure strategy would likely be countervailed by the existence of another strong full-line wholesaler (Uniphar), which could to a large extent replace the Notifying Party in the upstream market. The loss of revenue in the upstream market could in all likelihood not be recouped by increased revenues in the downstream retail pharmacies market, given the limited number of outlets the Notifying Party will control.
- (36) A respondent to the market investigation expressed the concern that independent pharmacies' sales data could be transferred to Lloyds pharmacies if no Chinese walls were implemented within the merged entity. The access to commercially sensitive information from their competitors may provide Lloyds pharmacies with an advantage when competing on the retail pharmacy market. However, [...]. In light of the Parties' position on separation of data and the fact that retail pharmacies could turn to Uniphar (which is not vertically-integrated²³ and therefore not subject to the same concerns) for their wholesaling needs, the Commission considers that this concern does not lead to serious doubts.
- (37) The market investigation also highlighted a potential vertical relationship stemming from the Notifying Party's Northstar business (a private label generic pharmaceutical manufacturer). However, the Notifying Party indicated that this business supplies generic products to the US and Canadian markets, sells no products in the European Union [...]. Therefore, there is no vertical relationship in the EEA in relation to Northstar.

²² Independent retail pharmacies (or those in chains comprising three or less pharmacies) comprise the majority of the total number of retail pharmacies operating in Ireland.

²³ For completeness, Uniphar owns a very limited number of retail pharmacies in Ireland, see the CCPC Decision in case M/15/076 – Uniphar / Lindchem.

- (38) In view of the above, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the vertical relationship in Ireland.

6. CONCLUSION

- (39) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement with regard to the markets outside the United Kingdom. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission