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*Case No COMP/M.4120
– Celesio/Tjellesen/Max
Jenne*

Only the English text is available and authentic.

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

Article 4 (4)
Date: 18/05/2006



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18/05/2006

SG-Greffe(2006)
D/202656/202657/202658

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE
ARTICLE 4 (4) DECISION

PUBLIC VERSION

To the notifying parties:

To the Danish Competition Authority

Dear Sir/Madam,

**Subject: Case No COMP/M.4120 – Celesio/Tjellesen/Max Jenne
Reasoned submission pursuant to article 4(4) of Regulation No 139/2004
for referral of the case to Denmark**

1. On 06/04/2006, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Council Regulation (EC) No 139/2004 (“EC Merger Regulation”) with respect to the transaction cited above. A copy of this submission was transmitted to Member States on 06/04/2006.
2. In support of their referral request, the submitting parties have mentioned in the Reasoned Submission that the geographic focus of the proposed concentration is on the territory of Denmark.
3. The Danish Competition Authority took no decision within the 15 working days of receiving the submission. It is therefore deemed to have agreed to the referral request.

I. THE PARTIES

4. Celesio AG (“Celesio”) is a German listed company active in the wholesale distribution of pharmaceuticals, in the provision of supplier services to pharmaceutical manufacturers, and operates pharmacies in several countries. Celesio is currently not active in Denmark.

5. K.V. Tjellesen A/S (“Tjellesen”) is a Danish wholesale distributor of pharmaceuticals and supplier service provider to other pharmaceutical companies in Denmark and to a minor extent in other Nordic and Baltic countries. Tjellesen achieves the overwhelming majority of its turnover in Eastern Denmark, and the remaining in Western Denmark.
6. A/S Max Jenne Medicinalvarer En Gros (“Max Jenne”) is a Danish company that focuses exclusively on full-line wholesale of pharmaceuticals in Denmark. It achieves almost its entire turnover in the Western part of Denmark.

II. THE OPERATION AND CONCENTRATION

7. The contemplated concentration concerns Celesio’s combined acquisition of sole control of Tjellesen and Max Jenne. The two transactions are legally and economically fully interdependent, and the respective contracts provide that neither can take place in isolation. Therefore they are treated as one and the same concentration. The proposed concentration, therefore, constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion¹ (Celesio: EUR [...], Tjellesen: EUR [...], Max Jenne: EUR [...]). At least two of the undertakings concerned have a Community-wide turnover in excess of EUR 250 million (Celesio: EUR [...], Tjellesen: EUR [...]). While Tjellesen and Max Jenne achieved more than two-thirds of their Community-wide turnover in Denmark, Celesio did not. The notified operation therefore has a Community dimension.

IV. ASSESSMENT

A. Relevant product markets

9. On the basis of the information submitted in the Reasoned Submission, the relevant product market is the market for wholesale distribution of pharmaceuticals. According to the parties, a separate market for the distribution of para-pharmaceuticals² could also be defined.
10. The activities of the parties overlap only in the market for wholesale distribution of pharmaceuticals and to a lesser extent in the market for the distribution of para-pharmaceuticals. In addition, there is a possible vertical relationship between the supplier services activities of Tjellesen and the wholesale distribution activities of

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

² Para-pharmaceuticals cover a large variety of products such as vitamins, dietary supplements, beauty and health care products, baby products and other similar products.

Max Jenne, which could lead to one additional potential affected market for supplier services.

B. Relevant geographic market

11. The parties submit that the market for wholesale distribution of pharmaceuticals is regional in scope and should be defined as the Eastern and Western Danish market respectively. According to the parties, a regional approach is supported by the emphasis placed by pharmacies on the frequency and speed of delivery. However, even if the markets were defined to be national, the present transaction would only lead to an overlap in Denmark. Therefore, the exact definition of the geographic market for wholesale distribution of pharmaceuticals can be left open since it would not affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.
12. The parties consider the geographic dimension for the distribution of para-pharmaceuticals to be national since it does not require the same frequency of delivery as pharmaceuticals. However, the exact definition of the geographic market for wholesale distribution of pharmaceuticals can be left open since it would not affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.
13. With regard to the market for supplier services, the parties consider it to be national in scope. According to the parties, supplier services comprise among other things pre-wholesale deliveries of pharmaceuticals from manufacturers and parallel importers to wholesale distributors. This takes place on a national level. However, supplier services still require a local presence and the geographic market is therefore unlikely to be wider than national.

C. Assessment

14. On the basis of the information submitted in the Reasoned Submission, Tjellesen and Max Jenne are both active in the wholesale market for distribution of pharmaceuticals in Denmark where the concentration would give rise to one horizontally affected market, if defined on a national basis or to two horizontally affected markets on a local basis. Celesio is not active in Denmark. Tjellesen and Max Jenne would have a combined market share of [20-30]% in Denmark in 2005 (Tjellesen: [10-20]%, Max Jenne [10-20]%), if considered at national level. If markets were defined to be local, Tjellesen and Max Jenne would have a combined market share of [30-40]% in Eastern Denmark (Tjellesen: [30-40]%, Max Jenne [0-10]%) and a combined market share of [20-30]% in Western Denmark (Tjellesen: [0-10]%, Max Jenne [10-20]%).
15. According to the parties, the combined market share of Tjellesen and Max Jenne on the Danish market for para-pharmaceuticals amounts to [0-10]%. Celesio is not active in Denmark.
16. Since Max Jenne is not active in supplier services, the only possible concerns in relation to a Danish market for supplier services would be of a vertical character. Tjellesens market share on a Danish market for supplier services amounted to [20-30]% in 2005. Celesio is not active in Denmark.

V. REFERRAL

17. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the EC Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations³ (point 17) indicates that, in seeking a referral under Article 4(4), *“the merging parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny”, and that “such indications may be no more than preliminary in nature...”*. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition, if any, of the concentration is liable to take place on distinct markets Denmark, and that the requested referral would be consistent with point 20 of the notice.

VI. CONCLUSION

18. For the above reasons, and given that Denmark has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by Denmark. This decision is adopted in application of Article 4(4) of Council Regulation (EC) No 139/2004.

For the Commission,

(Signed)
Philip LOWE
Director General

³ http://europa.eu.int/comm/competition/mergers/legislation/consultation/case_allocation_tru.pdf