



EUROPEAN COMMISSION
DG Competition

***Case M.7935 - MCKESSON
DEUTSCHLAND / BELMEDIS
/ COPHANA / ESPAFARMED /
ALPHAR PARTNERS /
SOFIADIS***

Only the English text is available and authentic.

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

Article 4(4)
Date: 01.04.2016



EUROPEAN COMMISSION

Brussels, 01.04.2016
C(2016) 2054 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the Belgian National Competition Authority

Dear Sirs,

Subject: Case M.7935 – MCKESSON DEUTSCHLAND / BELMEDIS / COPHANA / ESPAFARMED / ALPHAR PARTNERS / SOFIADIS
Commission decision following a Reasoned Submission pursuant to Article 4(4) of Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area² for referral of the case to Belgium.

Date of filing: 26.02.2016

Legal deadline for response of Member States: 18.03.2016

Legal deadline for the Commission decision under Article 4(4): 06.04.2016

I. INTRODUCTION

1. On 26 February 2016, 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 (the "Merger Regulation") with respect to the transaction cited above. The Notifying Party requests the operation to be examined in its entirety by the competent authorities of Belgium. A copy of this submission was transmitted to Member States on the same day.
2. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the Parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State

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

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

where the concentration may significantly affect competition and which presents all the characteristics of a distinct market.

3. The Belgian Government, represented by Mr. Kris Peeters (Deputy Prime Minister and Minister for Employment, Economy, and Consumer Affairs) has formally stated on 8 February 2016 that it does not raise any objections regarding the referral of the concentration to the Belgian Competition Authority.
4. Following notification of the Reasoned Submission, the Belgian Competition Authority did not indicate to the Commission that it opposed the proposed referral.
5. No other Member State has raised objections to the referral within the timeline specified in Article 4(4) of the Merger Regulation.

II. THE PARTIES

The purchaser ("Notifying Party")

6. McKesson Deutschland GmbH & Co. KGaA ("McKesson Deutschland") is an indirect subsidiary of McKesson Corporation ("McKesson Corp.", USA), that is the ultimate controlling company of Celesio AG ("Celesio", Germany), a German company active in Belgium through the indirectly controlled affiliates Pharma Belgium ("Pharma Belgium", Belgium), PharmActiv ("PharmActiv", Belgium) and Lloydspharma ("Lloydspharma", Belgium).
7. Pharma Belgium is active in 'full-line' wholesale distribution of pharmaceutical products. PharmActiv offers buying group and/or support services to [Business secrets: number of pharmacies] pharmacies in varying intensity. Lloydspharma owns [Business secrets: number of pharmacies] pharmacies in Belgium.

The target companies

8. Belmedis S.A./N.V. ("Belmedis", Belgium) is active in 'full-line' wholesale distribution of pharmaceutical products; Cophana S.A. ("Cophana", Belgium) is active in pre-wholesale services for pharmaceuticals; Alphar Partners S.A. ("Alphar Partners", Belgium) is a holding company providing financial assistance to independent pharmacy-customers; Sofiadis N.V. ("Sofiadis", Belgium) is a purchasing cooperation for pharmacies; Espafarmed S.L.U. ("Espafarmed", Spain) is a small trading agent in Spain; Sofarex N.V. ("Sofarex", Belgium) exports pharmaceutical products. Sofarex is not part of the transaction but its trading activities within the EU will be sold to Belmedis at closing and are therefore within the scope of the intended concentration.
9. The target companies currently all belong to the French group Welcoop ("Welcoop Group", France).

III. THE OPERATION AND CONCENTRATION

10. The transaction in question will bring together two wholesalers, both active in Belgium. It involves the acquisition of all shares in and thus sole control of Belmedis, Espafarmed, Cophana and Alphar Partners, as well as a majority controlling stake in Sofiadis by McKesson Deutschland.

IV. EU DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ [McKesson Corp: EUR 141 193 million, the target companies: EUR [Business secrets: turnover]]. At least two of them have an EU-wide turnover in excess of EUR 250 million [McKesson Corp: EUR [Business secrets: turnover], the target companies: EUR [Business secrets: turnover]], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
12. The notified operation therefore has an EU dimension within Article 1(2) of the Merger Regulation.

V. ASSESSMENT

13. The Parties are active in several markets of distribution of pharmaceutical products, namely 'full-line' wholesale distribution, pre-wholesale, and retail activities. None of these activities leads to any affected markets outside Belgium.⁴
14. In past cases, the Commission has considered that the geographic market for pre-wholesale activities could be considered to be broader than national,⁵ but has ultimately left the precise geographical market definition open. It can also be left open in this case as there are no horizontal overlaps. Any potential vertical effects would be confined to the national or sub-national scope of the Belgian wholesale market. The geographic market for retail activities for pharmacies may be national or smaller; however, the impact of the transaction on the Belgian retail market is minimal, as the Notifying Party will control only [Business secrets: number of pharmacies] out of more than 5 000 pharmacies in Belgium after the transaction.
15. In light of the foregoing, the assessment of the request for referral is based only on the affected market for 'full-line' wholesale distribution in Belgium.

A Relevant product markets

16. The transaction affects the market for 'full-line' wholesale distribution of pharmaceutical products in Belgium. In line with previous decisions, this market comprises the total range of medicines that require daily delivery from wholesalers, including doctor prescription medicines, over-the-counter medicines, products which require special storage and handling, and other parapharmaceuticals.⁶ The Notifying Party accepts this market definition.
17. For the purposes of the present Decision there is no need to deviate from previous Commission decisions.

³ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

⁴ The limited trading activities of the Parties do not affect competition outside Belgium as there are no overlaps and the traded amounts are minimal.

⁵ M.6044 – Alliance Boots/Andrae-Noris Zahn, at paragraph 12.

⁶ See cases No. COMP/M.7323 – Nordic Capital/GHD Verwaltung (2014), footnote 16; COMP/M.6044 – Alliance Boots/Andrae-Noris Zahn (2010), para 14; COMP/M.2573 – A&C/Grossfarma (2001), para 12; and V/M.1243 – Alliance UnichemPlc/SAFA Galenica SA (1998), para 7.

B Relevant geographic market

18. In previous decisions, the European Commission considered whether the geographic market of ‘full-line’ wholesale distribution of pharmaceutical products might be sub-national due to the emphasis placed by customers on the frequency and speed of delivery, and the resulting need for wholesalers to compete on a sub-national basis and to have warehouses at regional level. However, the Commission has left open whether the geographic scope of full-line wholesaling of pharmaceutical products is national or regional in scope.⁷
19. The Notifying Party submits that for the case at hand, which has its nexus entirely in Belgium, the geographic market cannot be narrower than national given the relatively small size of the country, the fact that wholesalers are progressively adopting a policy of consolidating into a small number of centralized, larger, and fully-automated warehouses. According to data submitted by the Notifying Party, this trend is followed by the target companies themselves.
20. For the purposes of the present decision it can be left open whether the geographic market for full-line wholesaling of pharmaceutical products is national or regional in scope.

C Assessment

21. On the basis of the information submitted in the Reasoned Submission, the only affected market is the Belgian market for ‘full-line’ wholesale distribution of pharmaceutical products. This market presents the characteristics of a distinct market because of the specific regulatory framework in each Member State and is therefore national or smaller in scope.⁸ There are no relevant competitive effects of the transaction outside of Belgium.
22. Based on the Reasoned Submission of the Notifying Party, Belmedis share in this market was [10-20]% and Pharma Belgium accounted for [10-20]% in 2015. Accordingly, the combined market share amounted to [20-30]%, which gives rise to a horizontally affected market.

Additional factors

23. Given that the focus of the competitive effects of the proposed transaction is confined to Belgium, the case may require investigative efforts at local level, for which the Belgian Competition Authority is best placed. Specifically, the relevant customers in the affected market are mainly pharmacies in Belgium, and therefore a market investigation carried out by the Belgian Competition Authority appears to be well-suited to properly reach the demand side of the market, to understand its main characteristics and to deal with possible concerns. The Belgian Competition Authority also has relevant experience in assessing the areas concerned.

⁷ See cases No. COMP/M.7323 – Nordic Capital/GHD Verwaltung (2014), para 30; COMP/M.6044 – Alliance Boots/Andreae-Noris Zahn (2010), para 15; and COMP/M.4301 – Alliance Boots/Cardinal Health (2006), paras 24-25.

⁸ M.2432 – Angelini/Phoenix/JV, at paragraphs 13-15; M.2573 – A&C/Grossfarma, at paragraphs 14-16; M.5433 – Sanacorp/Linde, at paragraphs 9-10.

24. The Commission has previously referred cases concerning wholesale distribution of pharmaceuticals to the competent national authorities.⁹

VI. REFERRAL

25. On the basis of the information provided by the Notifying Party in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the transaction is a concentration within the meaning of Article 3 of the Merger Regulation, it has an EU dimension and the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market.

VII. CONCLUSION

26. For the above reasons, and given that Belgium has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by Belgium. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(signed)
Johannes LAITENBERGER
Director-General

⁹ See, for example, Case M.4120 – Celesio/Tjellesen/Max Jenne and Case M.7721 Celesio/Sainsbury's UK pharmacy business.