



EUROPEAN COMMISSION
DG Competition

***Case M.7958 - MCKESSON GROUP / BUPA HOME
HEALTHCARE***

Only the English text is available and authentic.

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

Article 4(4)
Date: 28/04/2016



Brussels, 28.04.2016
C(2016) 2735 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Competition and Markets
Authority**

Dear Sirs,

**Subject: Case M.7958 – MCKESSON GROUP / BUPA HOME HEALTHCARE
Commission decision following a reasoned submission pursuant to Article
4(4) of Regulation No 139/2004¹ for referral of the case to the United
Kingdom and Article 57 of the Agreement on the European Economic Area².**

Date of filing: 1 April 2016

Legal deadline for response of Member States: 22 April 2016

Legal deadline for the Commission decision under Article 4(4): 11 May 2016

I. INTRODUCTION

1. On 1 April 2016, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities of the United Kingdom.

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').

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 where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
3. A copy of this Reasoned Submission was transmitted to all Member States on 1 April 2016.
4. By email of 20 April 2016, the Competition and Markets Authority ("**CMA**") as the competent authority of the United Kingdom informed the Commission that the United Kingdom agrees with the proposed referral.

II. THE PARTIES

5. **Celesio AG** ("**Celesio**", United Kingdom), ultimately owned by McKesson Corporation ("**McKesson**", United States), supplies pharmaceuticals and other healthcare-related products through its pharmaceutical wholesale business and retail pharmacies.

Celesio is active in the provision of clinical homecare services in the United Kingdom through its Evolution Homecare ("**Evolution**") business.

6. **McKesson** operates in the distribution and delivery of ethical and proprietary drugs and equipment, health and beauty care products, as well as the delivery of clinical solutions to healthcare organisations.
7. **Bupa** (United Kingdom) is a global health and care company, which offers health insurance, medical subscription schemes and other health and care funding products; operates care homes and retirement villages, primary care, diagnostic and wellness centres, hospitals and dental clinics; and provides workplace health services, health assessments and long term condition management services. Bupa also provides clinical homecare services in the UK through Bupa Home Healthcare Limited and Bupa Home Healthcare Group Limited (the "**Target Business**").
8. Celesio and the Target Business are referred to collectively as the "**Parties**".

III. THE OPERATION AND CONCENTRATION

9. The transaction in question (the "**Transaction**") involves the acquisition of sole control of the Target Business by an entity within Celesio, by means of purchase of sales.
10. The Transaction therefore constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

IV. EU DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (McKesson Group: EUR 141 207 million; the Target Business: EUR [...] million). Each of them has a Union-wide turnover in excess of EUR 250 million (McKesson Group: EUR [...] million; the Target Business: 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.

12. The notified Transaction has therefore an EU dimension within Article 1(2) of the Merger Regulation.

V. ASSESSMENT

13. The Transaction concerns the market for the provision of clinical homecare services³ in the United Kingdom and in particular the Low Tech segment, in which both the Target Business and Celesio (through Evolution) are active.
14. The Parties submit that the Transaction will also give rise to a minor vertical link between the activities of the Target Business and Celesio's pharmaceutical wholesaling business. However, no vertically affected markets would arise as a result of this relationship.

A Relevant product markets

15. In line with a previous decision of the Office of Fair Trading ("OFT"),⁴ the Parties submit that clinical homecare can be segmented as follows:
- **High Tech services:** dispense and delivery of compounded drugs to patients at home and / or on-going nurse support typically to administer intravenous drugs in the patient's home; and
 - **Low Tech services:** dispense and delivery of drugs to patients' homes with, in a small number of cases, ancillary nurse support (typically one-off training visit to self-administer drug).
16. According to the Parties, it is not necessary to further distinguish the High Tech or Low Tech markets on the basis of specific therapies as the nature of the clinical homecare services provided to patients does not substantially differ across the therapy areas.
17. For the purpose of the present Transaction, the exact product market definition for the provision of home care services can be left open as the outcome of the assessment of the referral request would not be different under any plausible market definition.

B Relevant geographic market

18. Although the Commission has not previously defined a market for the provision of Low Tech clinical homecare services, it has previously noted in a number of cases involving services similar to home care, that the geographic scope of the markets was not wider than national,⁵ due to the fact that i) home care services are normally

³ Clinical homecare would include a range of services such as compounding, dispensing and delivering medication to patients' homes with or without associated nursing services.

⁴ Acquisition by Bupa of Clinovia Group Limited (which was then renamed Bupa Home Healthcare), decision of the OFT, 9 May 2007.

⁵ Case COMP/M.7323 – *Nordic Capital/ Ghd Verwaltung* of 14.08.14. Referencing: COMP/M.4540, *Nestlé/Novartis* (Medical Nutrition Business of 29.06.2007, Case COMP/M.6504 – *LINDE / AIR PRODUCTS HOMECARE* of 18.04.2012. Different reimbursement systems at national level were also considered in COMP/M.4367 - *APW/Nordic Capital/Apsa/Capio* of 16.03.2007, although the exact market definition was ultimately left open.

covered by health insurance;⁶ ii) healthcare reimbursement systems are generally national; iii) regulatory regimes, prescription practices and market organisation (e.g. tenders by healthcare authorities or insurers, direct contracts with providers, influence of prescribing doctors on choice of provider) are different in each Member State, and iv) most players operate at national level and compete for patients across the national territory.

19. Similarly, in two recent referral decisions, the Commission considered the markets for wholesale of pharmaceutical products and retail pharmacies not wider than national in scope.⁷
20. The OFT did not reach a final conclusion on geographic market for the provision of homecare services in the *Bupa/Clinovia* decision. However, in an earlier decision regarding exclusionary behaviour by a pharmaceutical company,⁸ the OFT observed that the geographic dimension of the downstream market (for wholesale/homecare services) was not wider than the United Kingdom.⁹
21. The Parties submit that the relevant geographic market is not wider than national in scope.
22. To conclude, the relevant geographic market appears to be not wider than national.

C Assessment

23. According to the Commission Notice on case referral, in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4), the following two legal requirements must be fulfilled.¹⁰

There must be indications that the concentration may significantly affect competition in a market or markets

24. In this case, the Parties' combined market share in a plausible affected market for Low Tech clinical homecare services in the United Kingdom is [20-30] % by number of patients (the Target Business: [10-20]%; Evolution: [10-20]%) and [20-30]% by value (Target Business: [10-20]%; Evolution [5-10]%) in 2015.¹¹

⁶ The Parties note that homecare services in the UK are typically procured and funded by large scale pharmaceutical manufacturers (PharmaCos) or the British National Health System (NHS). PharmaCos and the NHS predominantly procure their contracts on a national basis.

⁷ Case COMP/M.7721 – *Celesio/ Sainsbury's UK pharmacy business* entirely referred to the CMA on 08.09.2015; and case COMP/M.7818 – *McKesson / UDG Healthcare (Pharmaceutical Wholesale and Associated Businesses)* partially referred to the CMA on 03.03.2016.

⁸ Decision of Director General of Fair Trading, No. CA98/3/03, 27 March 2003 regarding exclusionary behaviour by Genzyme Limited contrary to the provisions of Chapter II of the Competition Act 1992.

⁹ This reflected the fact that Genzyme Homecare and Healthcare at Home charge the NHS a uniform price across the United Kingdom.

¹⁰ Commission Notice on Case Referral in respect of concentrations – Para. 16.

¹¹ Tables 3 and 4 of Form RS.

The market(s) in question must be within a Member State and present all the characteristics of a distinct market

25. In line with the above, there are strong indications that the distinct market for the provision of clinical homecare services, which contains significant local elements, would be at most of national dimension.
26. Therefore, the two legal requirements set forth by article 4(4) of the Merger Regulation appear to be met.

Additional factors

27. The CMA has extensive and specific expertise in examining the market for the provision of homecare clinical services. By way of example, in 2007 the OFT dealt with the acquisition by Bupa of Clinovia Group Limited concerning the market for homecare services. Further, the CMA is currently assessing two additional transactions involving Celesio following a referral decision by the European Commission.¹²
28. A referral of the Transaction to the United Kingdom would also be consistent with previous references by the European Commission in the healthcare sector.¹³
29. The CMA would therefore be best placed to examine the effects of the Transaction.
30. Finally, the requested referral would preserve the principle of "one-stop-shop" to the extent that the case would be referred to a single competition authority, which is an important factor of administrative efficiency.

VI. REFERRAL

31. 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 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.
32. The Commission notice on case referral in respect of concentrations¹⁴ (point 17) indicates that, in seeking a referral under Article 4(4), "*the requesting 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...*".
33. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to

¹² Case COMP/M.7721 – *Celesio/ Sainsbury's UK pharmacy business* entirely referred to the CMA on 08.09.2015; and case COMP/M.7818 – *McKesson / UDG Healthcare (Pharmaceutical Wholesale and Associated Businesses)* partially referred to the CMA on 03.03.2016.

¹³ Case COMP/M.3990 – *Boots/Alliance UniChem*; case COMP No. IV/M.716 – *Gehe / Lloyds*; and case COMP/M.7721 – *Celesio/Sainsbury's UK pharmacy business*.

¹⁴ OJ C 56, 5.3.2005, p. 2.

take place on distinct markets in the United Kingdom, and that the requested referral would be consistent with point 20 of the notice.

VII. CONCLUSION

34. For the above reasons, and given that the United Kingdom has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the United Kingdom. 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