



EUROPEAN COMMISSION
DG Competition

Case M.10677 – EUROAPOTHECA / ORIOLA / JV

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

Article 4(4)
Date: 03/05/2022



EUROPEAN COMMISSION

Brussels, 3.5.2022
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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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**Subject: Case M.10677 – EUROAPOTHECA / ORIOLA / JV
Commission decision following a reasoned submission pursuant to
Article 4(4) of Regulation No 139/2004¹ for referral of the case to
Sweden and Article 57 of the Agreement on the European Economic
Area².**

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’).

Date of filing: 1 April 2022

Legal deadline for response of Member States: 27 April 2022

Legal deadline for the Commission decision under Article 4(4): 12 May 2022

Dear Sir or Madam,

1. INTRODUCTION

- (1) On 1 April 2022, 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 that the Transaction be examined in its entirety by the competent authorities of Sweden.
- (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 it be referred in whole or in part from the Commission to the Member State(s) 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 2022.
- (4) By e-mail of 22 April 2022, the Swedish National Competition Authority (“NCA”) as the competent authority of Sweden informed the Commission that Sweden agrees with the proposed referral.

2. THE PARTIES

- (5) **Euroapotheca** UAB (“Euroapotheca”, Lithuania) is an international group of companies, based in Lithuania, operating retail pharmacy chains in Estonia (Euroapteek), Latvia (Euroaptieka), Lithuania (Eurovaistinė) and Sweden (Apoteksgruppen) with both brick-and-mortar pharmacies and online presence. Euroapotheca is a wholly owned subsidiary of Vilniaus Prekyba UAB (Lithuania), a private holding company that oversees, controls and manages the group of subsidiary companies that operate retail chains, pharmacies and real estate development and management companies in the Baltic states, Sweden, Bulgaria and Poland.
- (6) **Oriola** Oyj (“Oriola”, Finland) is a publicly listed company based in Finland that is mainly active in the wholesale distribution of pharmaceuticals and related products in Finland and Sweden. Oriola also operates a retail pharmacy chain (Kronans Apotek) in Sweden.
- (7) Euroapotheca and Oriola are hereinafter together referred to as the “Parties”.

3. THE PROPOSED TRANSACTION

- (8) Pursuant to a Framework Merger Agreement and a Shareholders Agreement signed on 9 February 2022, Euroapotheca and Oriola agreed to establish a Joint Venture (“JV”), in which each of the Parties will own 50% of the shares and voting rights (the “Transaction”). Each of the Parties will contribute its respective retail pharmacy chain in Sweden to the JV (i.e. Euroapotheca will contribute “Apoteksgruppen” and Oriola “Kronans Apotek”). In addition, Oriola will

contribute part of its Swedish wholesale pharmaceutical business, [...] relating to the sourcing of over-the-counter pharmaceuticals, and health and well-being products.³

Joint control

- (9) Each of the Parties will hold an equal shareholding in the JV. The board of directors will consist of [...] members: [...] members elected from the candidates nominated by Euroapothecca and [...] members elected from the candidates nominated by Oriola. The decisions of the board of directors will be adopted by simple majority, except for certain decisions, including strategic commercial decisions, which require the positive vote of at least one member nominated by Oriola and one member nominated by Euroapothecca. In practice, each of Euroapothecca and Oriola will have the power to block the actions which determine the strategic commercial behaviour of the JV, namely the adoption and amendment of the business plan and the budget as well as the JV's investments.⁴ In addition, the first CEO [...]. Successive CEOs [...].⁵
- (10) Therefore, the Parties will exercise joint control over the JV within the meaning of Article 3(1)(b) of the Merger Regulation.

Full-functionality

- (11) The JV will operate on the market autonomously from its parent companies, with sufficient resources to operate independently, including its own management dedicated to its day-to-day operations. It will perform all the functions of an autonomous economic entity with respect to the retail pharmacy market. First, the JV has its own staff, financial resources, and dedicated management for its operation. Second, the JV is intended to operate indefinitely. Third, the JV will have its own access to the retail pharmacy and wholesale distribution of pharmaceuticals markets in Sweden and operate autonomously. The potential sale and purchase relationships between the JV and the Parties (i.e. purchases of prescription medicines by the JV from Oriola [...]) will be conducted at arm's length, on the basis of normal commercial conditions.⁶
- (12) In light of the above, the JV will be full-functional within the meaning of Article 3(4) of the Merger Regulation.
- (13) The Transaction is thus a concentration within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation.

4. EU DIMENSION

- (14) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Euroapothecca: [...]; Oriola: EUR 1 882 million) and each of them has an EU-wide turnover in excess of EUR 250 million (Euroapothecca: [...]; Oriola: [...]). Euroapothecca does not achieve more than two-

³ However, Oriola will retain (i) [...] (ii) its whole prescription medicines wholesale business in Sweden.

⁴ Form RS, paragraphs 42-44.

⁵ Form RS, paragraph 32.

⁶ Form RS, paragraphs 29-39.

thirds of its aggregate Union-wide turnover within one Member State. The Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

5. ASSESSMENT

- (15) The Transaction results in (i) horizontally affected markets in the retail pharmacy sector in Sweden, and (ii) vertically affected markets in Sweden between Oriola's activities on the market for the wholesale distribution of prescription medicines (upstream) and the JV's retail pharmacy activities (downstream). The Transaction does not give rise to any other affected markets in Sweden or any other affected markets outside of Sweden.

5.1. Relevant Markets

5.1.1. Retail pharmacy market

5.1.1.1. Product Market Definition

- (16) In previous decisions, the Commission considered a segmentation of the retail pharmacy market according to the type of product sold, namely between prescription medicines ("Rx") and non-prescribed over-the-counter ("OTC") medicines.⁷ In addition, the Swedish NCA considered that brick-and-mortar retail pharmacies constituted a distinct market from (i) supermarkets and convenience stores, as well as from (ii) online sales.⁸
- (17) The Parties claim that the retail pharmacy market should include both brick-and-mortar retail pharmacies and online sales. They also argue that, due to the differences in regulation, a segmentation between (i) Rx, (ii) OTC medicines and (iii) other health and wellbeing products ("traded goods" or "TG") may be appropriate.⁹
- (18) In any event, for the purposes of the Commission's assessment under Article 4(4) of the Merger Regulation, the precise scope of the product market can be left open.

5.1.1.2. Geographic market definition

- (19) In previous decisions, the Commission considered that the geographic market for pharmacy retailing is national (from a supply side) or local (from a demand side) in scope.¹⁰ Similarly, the Swedish NCA also considered that the retail pharmacy markets could be either national or local.¹¹

⁷ Case M.7494 – *Brocacef / Mediq Netherlands*, decision of 17 April 2015, paragraph 16; Case COMP/M.4301 – *Alliance Boots / Cardinal Health*, decision of 22 September 2006, paragraphs 20-22.

⁸ Form RS, paragraphs 77-78. Swedish NCA, Case n° 795/2014 – *ICA Detalj AB/Aptek Hjärtat Holding AB*.

⁹ Form RS, paragraphs 77-79.

¹⁰ Case M.7494 – *Brocacef / Mediq Netherlands*, decision of 17 April 2015, paragraph 19; Case COMP/M.4301 – *Alliance Boots / Cardinal Health*, decision of 22 September 2006, paragraphs 26-27.

¹¹ Form RS, paragraph 93. Swedish NCA, Case n° 795/2014 – *ICA Detalj AB/Aptek Hjärtat Holding AB*.

- (20) The Parties consider that the geographic scope of the retail pharmacy market is national.¹²
- (21) In any event, for the purposes of the Commission's assessment under Article 4(4) of the Merger Regulation, the precise scope of the geographic market can be left open.

5.1.2. *Wholesale of pharmaceuticals and associated products*

5.1.2.1. Product Market Definition

- (22) Pharmaceutical wholesale distribution concerns the delivery of pharmaceutical products to customers such as pharmacies, and – to a lesser extent – other customers such as hospitals and dispensing doctors. It does not include deliveries to end customers (i.e. patients).
- (23) In past decisions, the Commission considered the relevant product market to be full-line pharmaceutical wholesaling, excluding direct deliveries and short-liners.¹³ The Commission left open a potential segmentation by product type (i.e., Rx, OTC and other products) and customer type (i.e., pharmacies, hospitals, and doctors).¹⁴ The Swedish NCA did not consider a further segmentation of the market for wholesale distribution of pharmaceuticals and associated products.¹⁵
- (24) The Parties claim that the market for the wholesale distribution of pharmaceuticals and associated products should not be further segmented.¹⁶
- (25) In any event, for the purposes of the Commission's assessment under Article 4(4) of the Merger Regulation, the precise scope of the product market can be left open.

5.1.2.2. Geographic market definition

- (26) The Commission consistently considered that pharmaceutical wholesaling could be either national or sub-national (local) in scope, due to the emphasis placed by

¹² Form RS, paragraph 101.

¹³ Full-line wholesalers offer the full range of available Rx and OTC medicines as well as the full assortment of TG products sold in pharmacies. They typically offer one or two, and occasionally even three or more daily deliveries to customers. By contrast, short-line wholesalers offer only part of the product range, and typically do not offer more than one daily delivery. Apart from wholesalers, pharmacies can source products directly from manufacturers (direct deliveries), which typically deliver on a less-than-daily basis, and typically require a certain minimum purchase volume.

¹⁴ Case M.9711 – *Alliance Healthcare Deutschland / Gehe Pharma Handel*, decision of 17 August 2020, paragraphs 13-19. This market definition was later confirmed in Case M.10141 – *Sanacorp Pharmahandel / Leopold Fiebig and Gerda Nückel*, decision of 8 March 2021, paragraphs 7-10 and Case M.10404 – *Phoenix/McKesson*, decision of 30 March 2022. See also Case COMP/M.5433 – *Sanacorp / V.D. Linde*, decision of 4 March 2009; Case COMP/M.6044 – *Alliance Boots / Andreae-Noris Zahn*, decision of 16 December 2010; Case M.7818 – *McKesson / UDG Healthcare (Pharmaceutical Wholesale and Associated Businesses)*, decision of 3 March 2016; Case M.7494 – *Brocacef / Mediq Netherlands*, decision of 17 April 2015; Case M.7935 – *McKesson Deutschland / Belmedis / Cophana / Espafarmed / Alphar Partners / Sofiadis*, decision of 1 April 2016; Case COMP/M.2573 – *A&C / Grossfarma*, decision of 30 August 2001; Case No IV/M.1243 – *Alliance Unichem Plc / SAFA Galenica SA*, decision of 27 July 1998.

¹⁵ Form RS, paragraph 80. Swedish NCA, Case n° 795/2014 – *ICA Detalj AB/Apotek Hjärtat Holding AB*.

¹⁶ Form RS, paragraph 91.

customers on the frequency and speed of delivery of medical products.¹⁷ The Swedish NCA has considered the market for wholesale distribution of pharmaceuticals to be national in scope.¹⁸

- (27) The Parties claim that the market for wholesale distribution of pharmaceuticals is national in scope.¹⁹
- (28) In any event, for the purposes of the Commission's assessment under Article 4(4) of the Merger Regulation, the precise scope of the geographic market can be left open.

5.2. Assessment of the referral request

5.2.1. Legal requirements

- (29) According to the Commission Notice on case referral,²⁰ 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:
- (a) there must be indications that the concentration may significantly affect competition in a market or markets,²¹ and
 - (b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.²²

The Transaction may significantly affect competition in a market or markets

- (30) According to paragraph 17 of the Notice, the existence of an affected market is generally considered sufficient to meet the requirement set forth in Article 4(4) of the Merger Regulation.
- (31) In light of the information submitted by the Parties in the Reasoned Submission, the Transaction results in several horizontally affected markets in Sweden. The JV post-Transaction, would hold a combined market share of approximately [20-30]% in terms of value and 35.9% in terms of number of pharmacy outlets in Sweden on the overall market for retail pharmacy in Sweden.²³ On the market for retail pharmacy segmented by product type, the JV would hold a market share (in value) of [20-30]% for Rx medicines, [20-30]% for OTC medicines, and [20-30]% for TG products.²⁴ The Parties further submit that the Transaction is likely to give rise to

¹⁷ Case M.7494 – *Brocacef / Mediq Netherlands*, decision of 17 April 2015, paragraph 18; Case COMP/M.7323 – *Nordic Capital / GHD Verwaltung*, decision of 14 August 2014, paragraphs 30-31; Case COMP/M.6044 – *Alliance Boots / Andreae-Noris Zahn*, decision of 16 December 2010, paragraphs 15-16; Case COMP/M.4301 – *Alliance Boots / Cardinal Health*, decision of 22 September 2006, paragraphs 23-27; Case COMP/M.2573 – *A&C / Grossfarma*, decision of 30 August 2001, paragraphs 14-16.

¹⁸ Form RS, paragraph 94.

¹⁹ Form CO, paragraph 95.

²⁰ See the Commission's Notice on Case Referral in respect of concentrations (OJ C 56, 5.3.2005, p. 2) (the "Notice").

²¹ Further developed in point 17 of the Commission Notice on Case Referrals.

²² Further developed in point 18 of the Commission Notice on Case Referrals.

²³ Form RS, paragraphs 113-114 and 118. The JV would hold a market share of approx. [20-30]% in terms of value on the retail pharmacy market, excluding online sales.

²⁴ Form RS, paragraph 114.

affected markets at local level due to the Parties' overlapping presence in several areas of Sweden.²⁵

- (32) The Transaction also results in vertically affected markets in Sweden between Oriola's activities on the market for the wholesale distribution of Rx (upstream market on which Oriola holds a market share of [40-50]% in value) and the JV's retail pharmacy activities (downstream market on which the JV would hold a market share of 35.9% in terms of number of pharmacy outlets).
- (33) Therefore, the first legal requirement set forth by Article 4(4) of the Merger Regulation appears to be met.

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

- (34) According to paragraph 18 of the Notice, the second requirement set forth by Article 4(4) of the Merger Regulation is satisfied if the geographic scope of the markets where competition is affected is national or narrower than national.
- (35) As indicated above, the markets for the wholesale and for the retail sale of pharmaceuticals and associated products contain strong local elements and have been defined as national or narrower than national in scope by the Commission.
- (36) Therefore, the second legal requirement set forth by article 4(4) of the Merger Regulation also appears to be met.

5.2.2. *Additional factors*

- (37) In addition to the verification of the legal requirements, paragraph 19 of the Notice provides that it should also be considered whether referral of the case is appropriate, and in particular whether the competition authority to which the Parties are contemplating requesting the referral of the case is the most appropriate authority for dealing with the case. Paragraph 23 of the Notice further states that consideration should also, to the extent possible, be given to whether the national competition authorities to which the referral of the case is contemplated may possess specific expertise concerning local markets.
- (38) *First*, the Swedish NCA has specific expertise in the assessment of markets in the sector concerned. Indeed, the Swedish NCA has recently reviewed several concentrations in the (retail and wholesale) pharmaceuticals sector in Sweden, including concentrations involving the Parties.²⁶ In addition, the Swedish NCA participated in the major legislative process of re-regulating the Swedish retail pharmacy market in 2009 and published several reports assessing the conditions of competition in this sector. Finally, the Swedish NCA dedicates a separate chapter to the competition developments of the pharmaceuticals market in its yearly report on overall competition in Sweden.²⁷

²⁵ Form RS, paragraph 120.

²⁶ Form RS, paragraphs 162-177. In particular, the Swedish NCA reviewed Apopharm AB's acquisition of Vårdapoteket i Norden AB and Oriola KD-Holding's acquisition of Medstop in 2013, ICA Detalj AB's acquisition of Apoteket Hjärtat Holding AB in 2014, Oriola's acquisition of Svensk Dos in 2015, and Euroapothea UAB's acquisition of Apoteksgruppen in 2018.

²⁷ Swedish NCA, *Konkurrensen i Sverige 2018 – Kapitel 22 Läkemedelsmarknaden*, 2018.

- (39) *Second*, in light of the information submitted in the Reasoned Submission by the Parties, the Commission considers that the effects of the Transaction are confined to Sweden either at a national or sub-national level. Thus, the case may require investigative efforts at local level for which the Swedish NCA seems better placed. Specifically, customers in the wholesale pharmacy market are retail pharmacies and as previously mentioned other customers such as hospitals and dispensing doctors in Sweden, and therefore a market investigation carried out by the Swedish NCA appears to be better suited to properly reach the demand side of the market, to understand its main characteristics and to deal with possible concerns.
- (40) *Third*, a referral of the Transaction to the Swedish NCA satisfies the need to preserve the benefit of the “one-stop-shop” in line with point 11 of the Notice as there are no affected markets outside Sweden. The case would thus be referred in its entirety to a single competition authority (i.e. the Swedish NCA), which is an important factor of administrative efficiency.

5.2.3. *Conclusion on the referral request*

- (41) In the light of the foregoing and on the basis of the information provided by the Parties in the Reasoned Submission, the Commission concludes that 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 markets within a Member State which present all the characteristics of distinct markets.
- (42) Moreover, the requested referral would be consistent with paragraphs 19-23 of the Notice, in particular because the Swedish NCA appears to be the most appropriate authority to examine the proposed Transaction.

6. CONCLUSION

- (43) For the above reasons, and given that Sweden has expressed its agreement, the Commission has decided to refer the Transaction in its entirety to be examined by the Swedish NCA. 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)
Olivier GUERSENT
Director-General