EUROPEAN COMMISSION

Brussels, 30.3.2022
C(2022) 2138 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PHOENIX Pharmahandel GmbH & Co KG
Pfingstweidstraße 10-12
68199 Mannheim
Germany

Subject: **Case M.10404 – Phoenix / McKesson**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 9 February 2022, the Commission received notification of a proposed concentration by which Phoenix Pharmahandel GmbH & Co KG (Germany, hereinafter "**Phoenix**" or the "**Notifying Party**") intends to acquire sole control over a part of McKesson Europe Holdings GmbH & Co. KGaA (Germany), ultimately controlled by McKesson Corporation (USA) (the "**Transaction**"). Phoenix and McKesson Corporation are collectively referred to as the "**Parties**".

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").

1. THE PARTIES AND THE TRANSACTION

(2) **Phoenix** is controlled by Phoenix Pharma SE, the ultimate parent company of Phoenix, which operates as an integrated healthcare provider in Germany and other European countries. Phoenix Pharma SE's core business is the distribution of pharmaceutical goods in pharmaceutical wholesale and retail.[3] It operates, for these purposes, 161 depots and owns around 2,700 pharmacies in 14 European countries.

(3) **McKesson Corporation** is a pharmaceutical wholesale and retail company providing logistics and services in the healthcare sector. McKesson Corporation is active in 12 European countries, operates 62 depots and 411 pharmacies in Europe.

(4) The Transaction concerns the acquisition of sole control of a part of McKesson Corporation by Phoenix. In July 2021, the Parties entered into several agreements[4] pursuant to which Phoenix intends to acquire, by way of purchase of shares, McKesson Corporation's businesses in Belgium, France, Ireland, Italy, Portugal and Slovenia, as well as certain businesses in Germany, and a shared service centre in Lithuania[5] (together the "**Target**" or "**McKesson**").[6] The Transaction constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

2. UNION DIMENSION

(5) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Phoenix: EUR 28 209 million; McKesson: EUR […] million). Each of them has an EU-wide turnover in excess of EUR 250 million, (Phoenix: EUR […] million; McKesson: EUR […] million), and not each of them achieve more than two-third of their aggregate EU-wide turnover within one and the same Member State. The Transaction therefore has an EU dimension.

3. REFERRAL TO FRANCE

(6) By a letter dated 23 February 2022, the French National Competition Authority (*Autorité de la Concurrence* and, hereinafter, the "**French NCA**") requested the Transaction to be partially referred to France, with a view to assessing the effects of the Transaction in France under French national competition law, pursuant to Article 9(2)(a) of the Merger Regulation.

(7) On the same date of the present decision, the Commission adopted a decision partially referring the Transaction to France.

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3 Phoenix's complementary business areas include services for the pharmaceutical industry and the development and sale of merchandise management systems and logistics solutions.

4 Option Agreement and Share Purchase Agreement signed on 3, 4 and 5 July 2021.

5 The agreements also provide for the acquisition of certain McKesson Corporation headquarter functions in Germany, namely IT, finance and tax, controlling, and human resources. McKesson Corporation's activities in Austria, Denmark, Germany (apart from Admenta Deutschland, Recucare, Recusana and WZ GmbH), Norway and the United Kingdom will be carved out from the scope of the Transaction.

6 The Transaction also includes the acquisition of the remaining 45% shares indirectly held by McKesson Corporation in Brocacef Group N.V. As Phoenix already held 55% of the shares in Brocacef prior to the Transaction, there will be no change of control with respect to this entity.

(8) Therefore, in the present decision, the Commission will only assess the remainder of the Transaction and primarily Italy, where the Transaction gives rise to affected markets.

(9) The present decision is without prejudice to the outcome of the proceedings conducted by the French NCA in charge of the assessment of the effects of the Transaction on the relevant markets in France.

4. RELEVANT MARKETS

(10) The Parties are primarily active in the areas of pharmaceutical wholesale distribution and pharmaceutical retail distribution in various European countries.[7]

4.1. Pharmaceutical wholesale distribution

(11) Pharmaceutical wholesale distribution concerns the delivery of pharmaceutical products to 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). Pharmaceutical wholesalers are the link between manufacturers of pharmaceutical products and professional customers (primarily, pharmacies). Pharmaceutical wholesalers typically operate a network of depots from which they deliver to customers.

(12) Full-line wholesalers (or full-liners) offer the full product range of available prescription ("Rx") and non-prescription ("OTC") products as well as other products[8] and, typically, offer at least one or two daily deliveries. Short-line wholesalers (or short-liners) offer only part of the product range, focusing on high-demand and/or high-margins products, and typically do not offer more than one daily delivery. Pharmacies can also source directly from manufacturers (so-called direct deliveries), typically on a less-than-daily basis and requiring a minimum purchase volume.

(13) The Parties' activities give rise to horizontally affected markets in pharmaceutical wholesale distribution in France and Italy. As mentioned above, since the Transaction has been partially referred to the French NCA, the overlaps stemming from the Transaction in relation to France will not be further discussed in the present decision.

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7 Additionally, the Parties are active in areas including pre-wholesale services, healthcare services, ancillary services to pharmacies and private label sales. However, the Transaction does not give rise to affected markets for these activities under any plausible market definition, and therefore they will not be discussed further in the present Decision.

8 Such as, for example, para-pharmaceuticals, skin care, patches or face masks.

(14) In EEA countries other than France or Italy, either there is no horizontal overlap, or the horizontal overlap is very limited and is due to limited imports from other countries.[9] As these limited overlaps do not give rise to a meaningful change in the competitive landscape, they will not be discussed further in the present decision.[10]

4.1.1. Overview of the pharmaceutical wholesale distribution regulatory landscape in Italy

(15) Pharmaceutical wholesale distribution is defined within the Italian regulatory framework as any activity consisting of procurement, storage, supply or export of pharmaceutical products, excluding the supply of pharmaceutical products to the public, which is an activity reserved to pharmacies only.[11]

(16) Wholesalers are subject to the so-called "*public service obligation*", which consists in the obligation to provide the following minimum services to customers:[12]

- Keep all products listed in Table 2 of the Official Italian Pharmacopoeia on sale. Table 2 lists all those products that pharmacies are obliged to keep on sale at any time;
- Keep at least 90% of the pharmaceutical Rx products in stock;
- Keep at least one pharmaceutical packaged product on stock that has been obtained through an industrial process for each of the active ingredients indicated in Table 2 of the Official Italian Pharmacopoeia formulations contained in the National Form of the Italian Pharmacopoeia and which are on sale; and
- Supply pharmaceutical products in the "*sales area*" (as defined below), at the latest, within 12 working hours from any order.[13]

(17) Wholesalers are obliged to ensure at all times a sufficient range of medical products to meet the needs of a geographically determined territory ("*sales area*") and to ensure that the required supplies are delivered within the above-mentioned period (12 working hours from any order), at the latest. Before initiating distribution activities from a depot, each wholesaler must file an application to the competent

9 Namely, in Austria, Denmark, Croatia, Czech Republic, Hungary, Latvia, Lithuania, Netherlands, Poland, Romania, Sweden and Norway, where Phoenix operates a wholesale business and McKesson is active through wholesale exports carried out via third parties without any wholesale operation in the respective country.

10 No markets are affected in these countries since either the Parties are not active to a significant extent or they are active by way of imports, which give rise to a very negligible increment in the Parties' combined market share. Specifically, in those countries listed in footnote 10 above and based on 2020 market share data, the Parties' combined market share would remain below 20%, with the exception of Denmark, Croatia, Czech Republic, Hungary, Lithuania and Sweden. In Lithuania and Sweden, the Parties' combined market share would remain well below [20-30]% and the increment brought by McKesson is below [0-5]%. In Croatia, Czech Republic, and Hungary, the Parties' combined market share would be [30-40%], but the increment brought by McKesson is always well below [0-5]%. Finally, in Denmark, the Parties' combined market share would amount to [30-40]%, with an increment brought by McKesson of [0-5]%.

11 Legislative Decree No. 219/2006, Article 1, letter r).

12 Legislative Decree No. 219/2006, Article 105.

13 Form CO, paragraphs 1441-1444.

authority[14] and indicate therein which sales area (expressed in regions) the wholesaler wishes to supply from a given depot, or is logistically capable of supplying. The Notifying Party submits that, for its larger and mid-sized depots, and, thus, for the vast majority of its depots, it has authorization for […], while only very few small depots are authorized for […]. The Notifying Party submits that McKesson has authorisation for […] for both of its depots in Italy.[15]

4.1.2. Product market definition

Commission's precedents

(18) In past decisions, the Commission considered the relevant product market to be full-line pharmaceutical wholesaling, excluding direct deliveries and short-liners. 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).[16]

4.1.2.1. Full-liners *vs*. short-liners

Notifying Party's view

(19) The Notifying Party considers that short-liners do not play a significant role on the Italian pharmaceutical wholesale market and they do not typically compete with full-line wholesalers for pharmacy customers. Instead, the Notifying Party argues that short-liners in Italy offer pharmaceuticals to full-line wholesalers as an alternative source besides manufacturers.[17]

(20) The Notifying Party, therefore, claims that the relevant product market in Italy should comprise only full-line wholesalers but that this question can ultimately left open since including short-liners under the scope of the relevant product market would not significantly change the competitive assessment.[18]

Commission's assessment

(21) The Commission notes that, in its past decisional practice, it has defined a product market for full-line pharmaceutical wholesaling separate from short-line pharmaceutical wholesaling.[19] The results of the market investigation in the present case would appear to confirm the Commission's past practice.

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14 The competent authority is the local health authority (*Azienda Sanitaria Locale* or "ASL") at the location of the depot in question. An ASL is a public administration entity that performs the activities assigned to the National Health Service at local level. Each ASL is a legal entity with a certain degree of autonomy (organizational, administrative, technical, etc.). Every Italian region has at least one ASL.

15 Form CO, paragraphs 1446-1453.

16 M.9711 – *Alliance Healthcare Deutschland/Gehe Pharma Handel*. This market definition was later confirmed in M.10141 – *Sanacorp Pharmahandel/Leopold Fiebig and Gerda Nückel*. See also M.5433 – *Sanacorp/V.D. Linde*; M.6044 – *Alliance Boots/Andrae-Noris Zahn*; M.7818 – *McKesson/UDG Healthcare*; M.7494 – *Brocacef/Mediq Netherlands*; M.7935 – *McKesson Deutschland/Belmedis/Cophana/Espafarmed/Alphar Partners/Sofiadis*; M.2573 – *A&C/Grossfarma*; M.1243 – *Alliance Unichem Plc/SAFA Galenica SA*.

17 Form CO, paragraphs 1455-1460.

18 *Ibid*.

19 See, for instance, M.9711 – *Alliance Healthcare Deutschland/Gehe Pharma Handel*; M.10141 – *Sanacorp Pharmahandel/Leopold Fiebig and Gerda Nückel*.

(22) Specifically, the majority of competitors who responded to the market investigation indicated that short-liners do not exercise any competitive pressure on full-liners in Italy and that their presence is rather limited. One competitor, for instance, stated "*There are not significant short-liners in Italy*".[20] Consistently, the majority of customers who responded to the market investigation indicated that, out of their total supplies, short-liners account for only between 0-5% for Rx products and for less than 5% for OTC and other products.[21] There is no evidence stemming from the market investigation confirming the Notifying Party's view that short-liners in Italy offer pharmaceuticals to full-liner wholesalers as an alternative source to manufacturers.[22]

(23) In light of the foregoing, the Commission considers that the relevant product market for pharmaceutical wholesaling in Italy should encompass the activities of full-line wholesalers and exclude short-line wholesalers from its scope.

4.1.2.2. Pharmaceutical wholesaling *vs*. direct deliveries by manufacturers

Notifying Party's view

(24) The Notifying Party argues that direct deliveries performed by manufacturers should be considered as part of the same relevant product market as pharmaceutical wholesaling in Italy. According to the Notifying Party, manufacturers supply pharmacies directly with all products categories, *i.e.*, Rx, OTC, para-pharmaceuticals, and consumer health products. Therefore, the Notifying Party considers that direct deliveries exert significant competitive pressure on wholesalers in Italy and they should be considered as part of the same relevant product market or, if not, they are, at the very least, an out-of-market competitive constraint.[23]

Commission's assessment

(25) The Commission notes that, in its past decisional practice, it has defined a product market for pharmaceutical wholesaling separate from direct deliveries performed by manufacturers.[24] The market investigation results confirm the Commission's past practice.

(26) The market investigation feedback indicates that in Italy direct deliveries are particularly present in relation to certain products, such as generics, OTC, and other products, while they exercise much less pressure for the delivery of branded Rx products. This would be mirrored in the data submitted by the Notifying Party, which show that, by value, the share of direct sales for Rx products corresponds to 13.8%, whereas the share of direct sales for OTC and para-pharmaceuticals corresponds to 39.3%. Competitors who responded to the market investigation evidenced that direct deliveries exercise pressure on wholesalers to the extent that they focus on the delivery of higher-margin products, such as OTC and para-

20 Q2 – Questionnaire 2 to Competitors in Pharmaceutical Wholesaling in Italy, question 8.

21 Short questionnaire to Italian customers, questions 11-12.

22 Minutes of a call with a competitor, 18 November 2021; minutes of a call with a competitor, 29 November 2021.

23 Form CO, paragraphs 1461-1462.

24 See, for instance, M.9711 – *Alliance Healthcare Deutschland/Gehe Pharma Handel*; M.10141 – *Sanacorp Pharmahandel/Leopold Fiebig and Gerda Nückel*.

pharmaceuticals, at lower costs, since manufacturers only perform these deliveries in bulk and less than once a week. On the contrary, competitors stress that all full-line wholesalers must be able to supply at all times the entire list of pharmaceuticals, even the lower-margin products, and they have to deliver these products to their customers once *per* day, at the very least, while generally they offer two deliveries *per* day.[25]

(27) The slight majority of customers who responded to the market investigation confirmed that their needs for Rx products are covered by direct deliveries for very limited portions, *i.e.*, less than 5%, whereas direct deliveries would represent approximately 30% of their sourcing needs in relation to other products, such as OTC and para-pharmaceuticals.[26]

(28) Based on the market investigation results, the Commission observes that customers need to be supplied by wholesalers at least once a day and generally in Italy they are supplied twice a day. Pharmacies rely on having short-term access to the full range of products in order to have them available at all times, and only wholesalers are in a position to supply the full range of products to customers on short notice and regularly. Therefore, while direct deliveries may be considered as an out-of-market competitive constraint, they do not belong to the same product market of wholesaling activities as they cannot be considered as full substitutes to the service provided by wholesalers, namely because they do not provide pharmacies regularly and they generally do not supply the full range of products.

(29) In light of the foregoing, the Commission considers that the relevant product market should encompass only wholesaling activities and exclude direct deliveries from its scope.

4.1.2.3. Product and customer groups

Notifying Party's view

(30) The Notifying Party considers that a segmentation of the market for pharmaceutical wholesale distribution in Italy by product group (Rx, OTC and para-pharmaceutical products) or by customer group (pharmacies, hospitals, and doctors) is not appropriate.[27] The Notifying Party submits that in Italy all wholesalers have to deliver the full product range to all customers (especially to pharmacies) and all customers generally source all types of products, expecting wholesalers to be able to provide all of them. In relation to a potential segmentation by customer group, *i.e.*, pharmacies, hospitals, and doctors, the Notifying Party observes that competition between the Parties and their competitors in Italy primarily focuses on supplies to pharmacies, noting that supplies to hospitals and doctors are negligible; therefore, they would not change the overall picture.[28]

25 Q2 – Questionnaire 2 to Competitors in Pharmaceutical Wholesaling in Italy, questions 6 and 7.
26 Short questionnaire to Italian customers, questions 9-10.
27 Form CO, paragraphs 1463-1470.
28 Form CO, paragraphs 1463-1470.

Commission's assessment

(31) The Commission notes that, in its past decisional practice, it did not further segment the overall market for pharmaceutical wholesaling by either product or customer group.[29] The market investigation confirms the Commission's past practice.

(32) All competitors who responded to the market investigation confirmed that all products, *i.e.*, Rx, OTC, and para-pharmaceuticals, should be included in the same relevant market, and no further segmentation seems appropriate.[30] Similarly, all competitors who responded to the market investigation indicated that they focus their activities primarily, if not almost exclusively, on supplies to pharmacies, while supplies to hospitals and doctors are negligible.[31]

(33) In light of the foregoing, the Commission considers that the relevant product market should be the overall market for pharmaceutical wholesaling activities and no further segmentations by product or customer groups would be appropriate.

4.1.2.4. Conclusion

(34) In relation to the definition of the relevant product market, the Commission considers that the market for pharmaceutical wholesale in Italy should encompass full-line wholesalers and exclude short-liners and direct deliveries. Further segmentations of this market by product or customer group would not appear appropriate.

4.1.3. Geographic market definition

4.1.3.1. Overall national market *vs*. catchment areas

Commission's precedents

(35) The Commission did not adopt any recent decisions concerning the geographic market definition for pharmaceutical wholesale distribution in Italy. In past cases, the Commission found that the relevant geographic market for pharmaceutical wholesale distribution in Italy was regional, *i.e.*, sub-national, while leaving the exact market definition open.[32]

(36) The Commission's most recent decisions regarding pharmaceutical wholesale distribution in other EEA countries, such as Germany,[33] point towards a geographic market of catchment areas of 2 hours and 14 minutes around each depot of each wholesaler.

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29 See, for instance, M.9711 – *Alliance Healthcare Deutschland/Gehe Pharma Handel*; M.10141 – *Sanacorp Pharmahandel/Leopold Fiebig and Gerda Nückel*.

30 Q2 – Questionnaire 2 to Competitors in Pharmaceutical Wholesaling in Italy, question 11.

31 Q2 – Questionnaire 2 to Competitors in Pharmaceutical Wholesaling in Italy, question 12.

32 M.2573 – *A&C/Grossfarma*; M.2432 – *Angelini/Phoenix/JV*.

33 M.9711 – *Alliance Healthcare Deutschland/Gehe Pharma Handel*; M.5433 – *Sanacorp/V.D. Linde*, based on past practice of the German Federal Cartel Office and German courts (see OLG (2006), VI-Kart 40/01 (V)).

Notifying Party's view

(37) The Notifying Party considers that the most appropriate geographic market definition for pharmaceutical wholesale distribution in Italy is national. To support its views, the Notifying Party argues that regulatory conditions, in terms of market access or pricing, are homogeneous across the whole country. Similarly, the structure of demand is the same across the country, with pharmacies organised in chains or pharma groups. The Notifying Party also notes that the most important wholesalers are present throughout the whole of Italy, *e.g.*, Alleanza, VIM, So.Farma.Morra, CEF, Unico, Farvima, and Phoenix.[34]

(38) Alternatively, the Notifying Party considers a regional geographic market definition based on a driving time of 2 hours and 51 minutes from each depot as a suitable alternative approach.[35] This alternative geographic scope proposed by the Notifying Party is based on the methodology applied by the Commission in case M.9711 – *Alliance Healthcare Deutschland/Gehe Pharma Handel*, adapted to the features of the Italian market. Specifically, the Notifying Party observes that:

(a) In Italy, most pharmacies receive two deliveries per day, one performed overnight and the second one performed during the early afternoon (the "midday delivery"). However, differently from other countries, in Italy, the midday delivery is not necessarily expected by all pharmacies before a given hour of the afternoon, mainly because pharmacies adopt a multi-sourcing approach and they are served by different wholesalers through multiple deliveries per day. Therefore, the hours at which the midday delivery is conducted are rather flexible. Given this framework, the Notifying Party analysed the driving time between the Parties' depots and frequently delivered customers, and relied on real tour data to identify the customers regularly and frequently delivered during the midday tour;[36]

(b) Using this real data mentioned above, the Notifying Party analysed the maximum driving time between its depots and all frequently delivered customers as well as the maximum duration of those frequent tours. The results of this analysis led the Notifying Party to identify a maximum driving time of 2 hours and 51 minutes frequently driven by Phoenix during its midday tour from a given depot.[37]

Commission's assessment

(39) In line with its past practice, the Commission considers that national markets would be inappropriate for the assessment of the Italian market. The market investigation results confirmed that all competitors deliver pharmacies located in urban areas at least twice a day and the majority of competitors indicated that the same applies to pharmacies located in rural areas.[38] The vast majority of customers who responded to the market investigation indicated that the average number of deliveries is twice a

34 Form CO, paragraph 1475.
35 Form CO, paragraph 1477.
36 Form CO, paragraphs 1478-1483.
37 Form CO, paragraphs 1485-1489.
38 Q2 – Questionnaire 2 to Competitors in Pharmaceutical Wholesaling in Italy, question 14.

day.[39] Thus, although wholesalers compete in a given country through a network of depots, the ability to compete for given customers depends on the location of the depots. The market investigation results suggested that the shorter the distance between a depot and a customer, the greater the competitive advantage.[40] Therefore, it would not appear feasible for wholesalers to provide this type of service twice a day at national level in the absence of a nation-wide network of local depots. For instance, McKesson has only two depots located in Northern Italy, and thus cannot provide short-term deliveries throughout the whole Italian territory.

(40) With regard to the alternative geographic market definition proposed by the Notifying Party, based on a driving time of 2 hours and 51 minutes (*i.e.*, corresponding to 171 minutes) around the depots, the Commission considers that it would likely overestimate the scope of the geographic area around a depot in which a wholesaler can effectively compete, for the reasons outlined below.

(41) *First*, the slight majority of competitors who responded to the market investigation indicated that the most accurate maximum driving time would be of around 160 minutes and a number of competitors even mentioned 120 minutes, thus below the 171 minutes driving distance proposed by the Notifying Party.[41]

(42) *Second*, the 171 minutes catchment area would also be significantly larger than the catchment areas resulting from the application of the quantile threshold methodology.[42] By using the quantile threshold methodology, for the purposes of the present case, the Commission has assessed the driving time within which the Parties would serve 80% of their customers by turnover. The application of this methodology in the present case in the Italian wholesale pharmaceutical market would lead to the identification of a catchment area of approximately 90 minutes driving time around each depot, thus, well below the Notifying Party's suggested driving time of 171 minutes.

(43) Nonetheless, the Commission has also reviewed the Parties' driving time distribution in Italy (*see Figure 1 below*). Based on this distribution, it is apparent that the Parties make close to 100% (97-98%) of their deliveries (weighted average by turnover) within approximately 170 minutes-driving time, which corresponds broadly to the Notifying Party's suggested driving time of 171 minutes. The curve only levels off after that.

Figure 1: distribution of the Parties' driving times in Italy[43]

[..]

Source: Notifying Party's reply to RFI 6.

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39 Short questionnaire to Italian customers, question 4.

40 Q2 – Questionnaire 2 to Competitors in Pharmaceutical Wholesaling in Italy, question 18.

41 Q2 – Questionnaire 2 to Competitors in Pharmaceutical Wholesaling in Italy, questions 15 and 16.

42 The Commission has been using the quantile threshold methodology in other cases, which required the identification of local markets at the level of catchment areas around a given plant, warehouse, etc. See, for instance, M.10249 – *Derichebourg Environnement/Groupe Ecore Holding*.

43 The Commission considered only the drive time distance distribution weighted by turnover and not the drive time distance distribution weighted by number of pharmacies. This is because the drive time distance distribution weighted by turnover appears to be shorter than the drive time distance distribution weighted by number of pharmacies. Thus, for the purposes of this case, the Commission considered only the most conservative scenario.

(44) While the catchment area of 171 minutes driving time, as proposed by the Notifying Party, would seem appropriate considering the analysis of the Parties' driving time distribution in Italy, the market investigation results and the application of the quantile threshold methodology would point to a smaller catchment area. For these purposes, in its competitive assessment, the Commission will indicate the market shares for the two catchment areas of 90 minutes and 171 minutes driving time. The third potential alternative market definition, based on a catchment area within which 97-98% of turnover of a given depot is achieved, will not be further discussed in this decision, given that this catchment area would broadly coincide with the catchment area of 171 minutes proposed by the Notifying Party.

4.1.3.2. Conclusion

(45) In light of the foregoing, the Commission considers that the geographic markets for pharmaceutical wholesale in Italy are narrower than national. The Commission also considers that the alternative geographic market definition proposed by the Notifying Party, *i.e.*, 171 minutes driving time, is likely too broad. The exact delineation of the catchment areas can be left open for the purposes of the present decision, as pharmaceutical wholesale markets are in any event not wider than national, and the Transaction does not raise any competition concerns under any alternative plausible market definition. For the purposes of the competitive assessment, the Commission will indicate the market shares for the two catchment areas of 90 minutes and 171 minutes driving time.

4.2. Pharmaceutical retail distribution

(46) Pharmaceutical products produced by pharmaceutical manufacturers are dispensed to patients through a variety of channels. Rx products are typically dispensed to patients in retail pharmacies.[44] OTC products are sold either in retail pharmacies or in para-pharmacies, large-scale retail stores, and online channels. In many EEA-countries, including Italy, the online sales channel (e-commerce) has gained importance, in particular for the sale of OTC products. The e-commerce channel is expected to grow further in the future.

(47) There are more than 20,000 pharmacies in Italy, which can be classified into independent pharmacies, virtual chains and real pharmacy chains.[45] The majority of pharmacies in Italy are independent.

4.2.1. Product market definition

Commission and relevant national competition authorities' precedents

(48) The Commission has not dealt with the pharmaceutical retail market in Italy before. In its past practice regarding other countries[46], the Commission has identified a

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44 Based on Legislative Decree No. 219/2006, Article 1, letter r), pharmacies enjoy a legal monopoly over the supply of prescription drugs to final customers.

45 Independent pharmacies are non-affiliated private pharmacists owning and running a pharmacy; virtual chains are networks of affiliated independent pharmacies existing to leverage services; and real pharmacy chains are entities or investors owning multiple pharmacies.

46 M.4301 – *Alliance Boots/Cardinal Health*; M.7494 – *Brocacef/Mediq Netherlands*; M.7721 – *Celesio/ Sainsbury's UK pharmacy business*.

market for the retail sale of pharmaceutical products and considered whether it would be appropriate to further segment the market for pharmaceuticals according to a distinction between Rx and OTC products. The Commission has not assessed in the past whether a further potential segmentation identifying a separate segment for para-pharmaceuticals would be warranted.

(49) The Italian National Competition Authority ("**Italian NCA**"), in its past decision practice, has not drawn a distinction within pharmaceutical products, but has considered separate product markets for the retail sale of pharmaceutical products, on the one hand, and that of para-pharmaceutical products, on the other hand[47].

Notifying Party's view

(50) The Notifying Party concurs with the Italian NCA's finding of differences in the competitive conditions in the retail sales of para-pharmaceuticals[48], induced by the less strict regulations with regard to pricing and the possibility of purchasing those products in other channels than pharmacies (para-pharmacies, health corners, online retail[49]). Therefore, the Notifying Party would agree on a distinction between retail distribution of pharmaceuticals, on the one hand, and retail distribution of para-pharmaceuticals, on the other hand.

Commission's assessment

(51) There is no evidence stemming from the market investigation that would suggest a departure from the Commission's past practice, which suggests that there may be a distinction within pharmaceutical products between Rx products and OTC. However, ultimately, this definition can be left open. Therefore, for the purposes of the present decision, the Commission would leave open the exact product market definition for the pharmaceutical retail market in Italy, as no competition concerns arise on any plausible product market. The Commission notes that the Notifying Party is not active in pharmaceutical retail distribution in Italy, and the Target's market share levels do not raise concerns even under the narrowest possible market definition.[50]

4.2.2. Geographic market definition

Commission and relevant national competition authorities' precedents

(52) In its *Celesio/Sainsbury* decision[51], the Commission considered the pharmaceutical retail market in the UK to be national on the supply side and local on the demand side.

(53) Its national character on the supply side stemmed from the existence of national chains of pharmacies with national pricing decisions, advertising and promotion campaigns, as well as national regulation.

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47 C12196 – *F2I SGR/GRUPPO CRIMI*; C6759 –*PHARMACOOP ADRIATICA/FARMACIE COMUNALI DI PADOVA*.

48 Form CO, paragraph 1642

49 There are 6,548 para-pharmacies in Italy (June 2021) including health corners in large retail stores.

50 See below, Section 5.3.1.1.

51 M.7721 – *Celesio/ Sainsbury's UK pharmacy business*.

(54) On the demand side, pharmacies were considered local businesses, as most retail clients have their domicile within a limited radius around each pharmacy. The Italian NCA took a similar view and considered the geographic market as corresponding with the respective municipal territory, while leaving open the question of whether the municipal territory was also relevant for the largest cities[52].

Notifying Party's view

(55) The Notifying Party shares the regulators' practice and takes the view that the local relevant market corresponds to the respective municipal territory.

Commission's assessment

(56) There is no evidence stemming from the market investigation indicating that the Commission should depart from its past decisional practice. Therefore, while the geographic scope of the market for retail distribution presents certain national features on the supply-side, on the demand-side this market is local in nature.

(57) For the purposes of the present decision, however, the Commission can leave open the exact geographic market definition and the analysis regarding the relevance of municipal boundaries on the demand side, as in any event there are no competition concerns arising under any plausible market definition.

5. COMPETITIVE ASSESSMENT

(58) This section will first set out the analytical framework of the Commission's competitive assessment. It will then carry out the assessment for those areas where the Parties' activities give rise to horizontal overlaps and vertical relationships.

5.1. Analytical framework

(59) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it.

(60) A merger giving rise to a significant impediment of effective competition may do so as a result of the creation or strengthening of a dominant position in the relevant market(s). Moreover, mergers in oligopolistic markets involving the elimination of important competitive constraints that the parties previously exerted on each other, together with a reduction of competitive pressure on the remaining competitors, may also result in a significant impediment to effective competition, even in the absence of dominance.

(61) The Commission Guidelines on the assessment of horizontal mergers under the Merger Regulation (the "Horizontal Merger Guidelines")[53] describe horizontal non-coordinated effects as follows: "*A merger may significantly impede effective competition in a market by removing important competitive constraints on one or*

52 C12196 – *F2I SGR/GRUPPO CRIMI*.

53 OJ C 31, 5.2.2004, p. 5.

more sellers who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market."[54]

(62) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force.[55] That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present for significant non-coordinated effects to be likely. The list of factors, each of which is not necessarily decisive in its own right, is also not an exhaustive list.[56]

(63) Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, the entry of new competitors on the market, and efficiencies.

(64) Pursuant to Commission Guidelines on the assessment of non-horizontal mergers under the Merger Regulation (the "Non-Horizontal Merger Guidelines")[57], the Commission distinguishes between two broad types of such mergers: vertical mergers and conglomerate mergers.

(65) Vertical mergers involve companies operating at different levels of the supply chain. For example, when a manufacturer of a certain product (the "upstream firm") merges with one of its distributors (the "downstream firm"), this is called a vertical merger.[58]

(66) Conglomerate mergers are mergers between firms that are in a relationship that is neither horizontal (as competitors in the same relevant market) nor vertical (as suppliers or customers). In practice, the Commission focusses on mergers between companies that are active in closely related markets (e.g. mergers involving suppliers of complementary products or products that belong to the same product range).[59] The Transaction does not lead to markets where a conglomerate effects assessment is warranted.

(67) In assessing potential vertical effects of a merger, the Commission analyses whether a merger results in foreclosure so that actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these

54 Horizontal Merger Guidelines, paragraph 24.
55 Horizontal Merger Guidelines, paragraphs 27 and following.
56 Horizontal Merger Guidelines, paragraphs 24-38.
57 OJ C 265, 18.10.2008, p. 6-25.
58 Non-horizontal Merger Guidelines, paragraph 4.
59 Non-horizontal Merger Guidelines, paragraph 91.

companies' ability and/or incentive to compete. Such foreclosure may discourage entry or expansion of rivals or encourage their exit. Foreclosure thus can be found even if the foreclosed rivals are not forced to exit the market: it is sufficient that the rivals are disadvantaged and consequently led to compete less effectively. Such foreclosure is regarded as anti-competitive where the merging companies — and, possibly, some of its competitors as well — are as a result able to profitably increase the price charged to consumers.[60]

(68) Two forms of foreclosure can be distinguished. The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base (customer foreclosure).[61]

(69) In assessing both types of foreclosure, the Commission applies the ability, incentive, effects framework. This implies the assessment of whether, first, the merged entity would have the ability to engage in foreclosure, second, it would have the incentive to do so, and, third, what would be the overall impact on effective competition in the affected markets.[62] These aspects are cumulative, *i.e.*, if one of them is missing, foreclosure is unlikely.[63]

5.2. Assessment of horizontal non-coordinated effects

(70) Both Parties are active in the market for pharmaceutical wholesale distribution in Italy and, more specifically, Phoenix provides wholesale distribution services throughout its local company, Comifar Distribuzione S.p.A. (“Comifar”), while McKesson is active through its national subsidiary Admenta Italia Group (“Admenta”). Phoenix operates 23 depots and 4 hubs across Italy, whereas Admenta has two depots in the regions of Lombardy and Emilia-Romagna.

(71) This section sets out the Commission’s competitive assessment for the horizontal non-coordinated effects stemming from the Transaction in relation to the affected markets for pharmaceutical wholesale distribution in Italy.

5.2.1. Market structure

(72) The table below provides the Parties’ market shares for the catchment areas around each of the Parties’ overlapping depots, where affected markets arise, based on both (i) a 90 minutes-driving time catchment area and (ii) a 171 minutes-driving time catchment area.

60 Non-horizontal Merger Guidelines, paragraph 29.
61 Non-horizontal Merger Guidelines, paragraph 30.
62 Non-horizontal Merger Guidelines, paragraphs 32 and 59.
63 *Ibid.*

Table 1: Parties' market shares for pharmaceutical wholesale distribution in Italy for catchment areas of 90 minutes and 171 minutes driving time for each of the affected depots by value (2020) (excluding direct deliveries and short-liners)[64]

Parties' market shares for pharmaceutical wholesale distribution in Italy in 2020 by value						
Depot	**Comifar (Phoenix)**		**Admenta (McKesson)[65]**		***Combined***	
	90 minutes	**171 minutes**	**90 minutes**	**171 minutes**	**90 minutes**	**171 minutes**
Admenta Bologna	[10-20]%	[20-30]%	[10-20]%	[5-10]%	[30-40]%	[30-40]%
Admenta Milan	[20-30]%	[20-30]%	[5-10]%	[5-10]%	[30-40]%	[20-30]%
Comifar Belfiore	[20-30]%	[20-30]%	[5-10]%	[5-10]%	[20-30]%	[30-40]%
Comifar Casalecchio	[10-20]%	[20-30]%	[10-20]%	[5-10]%	[30-40]%	[30-40]%
Comifar HubNord	[20-30]%	[20-30]%	[5-10]%	[5-10]%	[30-40]%	[20-30]%
Comifar Mondolfo	[10-20]%	[10-20]%	[0-5]%	[5-10]%	[20-30]%	[20-30]%
Comifar Novate	[20-30]%	[10-20]%	[5-10]%	[5-10]%	[30-40]%	[20-30]%
Comifar Paese	[30-40]%	[20-30]%	[5-10]%	[5-10]%	[30-40]%	[30-40]%
Comifar Pavia	[20-30]%	[10-20]%	[5-10]%	[5-10]%	[30-40]%	[20-30]%
Comifar Perugia	[20-30]%	[20-30]%	[0-5]%	[0-5]%	[20-30]%	[20-30]%
Comifar Pescia	[20-30]%	[10-20]%	[5-10]%	[5-10]%	[20-30]%	[20-30]%
Comifar Piacenza	[20-30]%	[20-30]%	[10-20]%	[5-10]%	[30-40]%	[20-30]%
Comifar Torino	[10-20]%	[10-20]%	[5-10]%	[5-10]%	[20-30]%	[20-30]%
Comifar Trieste	[30-40]%	[30-40]%	[0-5]%	[5-10]%	[30-40]%	[30-40]%

Source: Form CO, Annex RFI 1, Q.22 and Q.23 and Annex RFI 6, Q.3.

(73) Table 1 above shows the Parties' market shares (i) on the broader catchment area of 171 minutes driving time, based on both the Notifying Party's view and the area within which 97-98% of turnover of a given depot is achieved, and (ii) on a narrower catchment area of 90 minutes driving time, in which 80% of turnover of a given depot is included. The Parties' market shares do not significantly differ when considering one or the other of the two alternative geographic market definitions envisaged above (see paras. 40 *sqq*.), and the biggest variation in the market share levels between the two definitions is of [5-10] percentage points in the catchment area around Comifar Paese.

(74) As a result of the Transaction, the Parties' combined market share would remain always below [30-40]% considering both alternative geographic market definitions. The only exceptions would be (i) Comifar Paese, where the Parties' combined market share would amount to [30-40]%, considering a catchment area of 90 minutes

64 The Parties' market shares in 2018 and 2019 do not differ materially from the Parties' market shares in 2020.

65 McKesson's market shares include captive sales to its own pharmacies and para-pharmacies. These sales account for approximately [30-40]% of McKesson's sales in Italy based on rough estimates provided by the Notifying Party.

driving time; and (ii) Comifar Trieste, where the Parties' combined market share would amount to, respectively, [30-40]% in a catchment area of 90 minutes driving time and [30-40]% in a catchment area of 171 minutes driving time.

(75) Regarding the remaining depots, considering the narrower market definition based on 90 minutes driving time, in a number of catchment areas, the Parties' combined market shares would remain below 25%, which gives rise to the presumption of compatibility of the Transaction with the common market.[66] Specifically, this would be the case for Comifar Mondolfo, Comifar Perugia, and Comifar Torino. In the catchment areas around the depots of Admenta Bologna, Admenta Milan, Comifar Belfiore, Comifar Casalecchio, Comifar HubNord, Comifar Novate, Comifar Pavia, Comifar Pescia, and Comifar Piacenza, the Parties' combined market shares would remain between [20-30]% and [30-40]%. Across these catchment areas, a number of competitors, such as CEF, Unico, So.Farma.Morra and Alleanza, would remain in the market with, respectively, [10-30]% market share for CEF, [0-20]% market share for Unico, [0-20]% for So.Farma.Morra, and [0-20]% market share for Alleanza.

5.2.2. Competitive analysis

Notifying Party's view

(76) The Notifying Party submits that the combination of the Parties' activities in the market for pharmaceutical wholesale distribution in Italy will not give rise to horizontal non-coordinated effects, due to the reasons set out below:

(i) *First*, the Parties' combined market shares across the various catchment areas would remain moderate and below critical levels. The increment brought by McKesson is rather low and it never exceeds [5-10]%, considering a catchment area of 171 minutes;[67]

(ii) *Second*, a sufficient number of credible alternative wholesalers, such as Alleanza, So.Farma.Morra, CEF, Unico, and Farvima, would remain in the market post-Transaction. According to the Notifying Party, customers would have ample choice among different wholesalers within the same catchment area and they could also easily switch to wholesalers from outside the catchment areas;[68]

(iii) *Third*, the Parties are not particularly close competitors, especially considering that McKesson is much smaller than Phoenix in Italy and only present with two depots in the whole country. Phoenix's geographic coverage goes clearly beyond McKesson's and much more often encounters CEF, Unico, Alleanza, VIM or So.Farma.Morra as closer rivals;[69]

66 Horizontal Merger Guidelines, paragraph 18.
67 Form CO, paragraphs 1548-1552.
68 Form CO, paragraph 1553.
69 Form CO, paragraphs 1550-1551.

(iv) *Fourth*, barriers for pharmacies to switch suppliers are very low and therefore switching costs do not represent a significant obstacle for customers should they decide to switch to a different wholesaler;[70]

(v) *Fifth*, the vast majority of pharmacies in Italy adopt a multi-sourcing strategy, which usually implies that pharmacies have 3 or 4 wholesalers at the same time;[71] and

(vi) *Finally*, the Parties face substantial buyer power from customers across the various catchment areas,[72] even more so if the expected further growth of pharmacy chains and pharma groups in Italy is considered.[73]

Commission's assessment

(77) Those catchment areas, where the Parties' combined market shares are below 35%, are not discussed individually in this decision.[74] The Commission assessed the competitive situation in these catchment areas by considering the combined market shares of the Parties and their competitors' market shares, other factors, including the presence of competitors with significant market power, and the results of the market investigation. The Commission reached the conclusion that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the overlapping catchment areas where the Parties would hold a combined market share below 35%, due to (i) the limited market shares of the Parties, (ii) the presence of significant competitors remaining in the market post-Transaction that will likely sufficiently constrain the merged entity, as well as (iii) the overall positive feedback received from the market investigation.[75]

(78) In the following, the Commission individually assesses only those catchment areas where the Parties' combined market share is above 35%:

(79) **Comifar Paese.** In the catchment area around the depot of Comifar Paese, the Parties would hold a combined market share above [30-40]% only considering an alternative narrower catchment area of 90 minutes driving time from the depot. In such case, the Parties' combined market share would amount to [30-40]% post-

70 Form CO, paragraphs 1556-1557.

71 Form CO, paragraphs 1556-1557.

72 Form CO, paragraphs 1558-1562.

73 The Notifying Party indicates that, following the market liberalisation occurred in 2017, pharmacy chains will reach a market share of approximately [10-20]% and buying groups will reach a market share of [30-40]% by 2025. According to the Notifying Party, this development will increase the buyer power of pharmacies as well and will lead to constant pressure on prices and demand for higher discounts from wholesalers.

74 These catchment areas are Comifar Mondolfo, Comifar Perugia, and Comifar Torino, Admenta Bologna, Admenta Milan, Comifar Belfiore, Comifar Casalecchio, Comifar HubNord, Comifar Novate, Comifar Pavia, Comifar Pescia, and Comifar Piacenza.

75 Specifically, the Commission asked customers and competitors if they considered that, post-Transaction, a sufficient number of full-line wholesalers would remain in the market to fulfill pharmacies' needs. The vast majority of respondents confirmed that there would be no area where pharmacies would be left only with the merged entity and two or fewer competing full-liners. Additionally, the Commission asked competitors to indicate what the impact of the Transaction could be on prices/rebates, number of deliveries, products availability, quality of the service and reliability, and the majority of them submitted that the impact would most likely be neutral. The Commission gathered similar answers from customers about the impact of the Transaction on prices/rebates and number of deliveries.

Transaction, with an increment brought by McKesson of [5-10]%. There are a number of factors signalling that the Transaction does not give rise to competitive concerns in this area. Specifically, the Commission observes that at least three other important full-line wholesalers will remain in the market holding a market share of at least [10-20]%, namely Unico ([10-20]% market share), Unifarm ([10-20]% market share), and CEF ([20-30]% market share). Additionally, the vast majority of customers who responded to the market investigation indicated that the Transaction will have a neutral impact on the market and they confirmed that, post-Transaction, a sufficient number of wholesalers would remain in the market.[76] Finally, the large majority of customers who responded to the market investigation indicated that the impact the Transaction may have on prices/rebates could be positive, whereas their answers were not conclusive in relation to the impact the Transaction may have on the number of daily deliveries.[77]

(80) **Comifar Trieste.** In the catchment area around the depot of Comifar Trieste, the Parties would hold a combined market share just equal to [30-40]%, considering an alternative narrower catchment area of 90 minutes driving time from the depot, and their combined market share would amount to [30-40]%, considering the Notifying Party's suggested catchment area of 171 minutes driving time from the depot. Analysing the second scenario, in which the Parties' combined market share would be higher and taking into account that the conclusions would not significantly differ under the first scenario, the Commission notes that Parties' combined market share would amount to [30-40]% post-Transaction, with an increment brought by McKesson of [5-10]%. There are a number of factors signalling that the Transaction does not give rise to competitive concerns in this area. Specifically, the Commission observes that at least three other important full-line wholesalers will remain in the market holding a market share of at least [10-20]%, namely Unico ([20-30]% market share), Farmacisti Più Rinaldi S.p.A.[78] ([10-20]% market share), and CEF ([10-20]% market share). Additionally, the vast majority of customers who responded to the market investigation indicated that the Transaction will have a neutral impact on the market and they confirmed that, post-Transaction, a sufficient number of wholesalers would remain in the market.[79] Finally, while the large majority of customers who responded to the market investigation indicated that the impact the Transaction may have on the number of daily deliveries would be likely neutral, they signalled that the impact on prices/rebates might be negative, without elaborating on this claim.[80]

(81) In addition to the above, the Commission notes that, across all affected catchment areas:

(82) *First,* the market investigation results showed that Phoenix and McKesson are perceived as close competitors only in relation to Northern Italy, specifically in the regions of Lombardy and Emilia-Romagna, where McKesson is mainly active. Competitors, however, indicated that there would be other players competing with Phoenix much more closely than McKesson, such as CEF, So.Farma.Morra, and

76 Short questionnaire to Italian customers, questions 15-16.

77 Short questionnaire to Italian customers, questions 17-18.

78 Farmacisti Più Rinaldi S.p.A. is a full-line wholesaler active primarily at regional level, in the regions of Friuli-Venezia Giulia and Veneto. This wholesaler does not have a presence across the whole national Italian territory.

79 Short questionnaire to Italian customers, questions 15-16.

80 Short questionnaire to Italian customers, questions 17-18.

Farvima. While Phoenix is considered the market leader, McKesson would be perceived as the fifth or the sixth competitor in the market.[81]

(83) *Second,* the majority of competitors who responded to the market investigation indicated that barriers to entry the market are perceived as generally high. At the same time, the presence of an already significant number of wholesalers which make the competitive landscape very dynamic also detracts from additional market entry. Additionally, competitors mentioned the regulatory framework as another barrier to entry.[82]

(84) *Third,* half of customers who responded to the market investigation indicated that they never changed their primary full-line wholesaler. Only smaller sub-sets of customers answered that they changed their primary full-line wholesaler once or twice in the last five years. Generally, however, customers consider that switching is rather feasible and would not require them to incur additional costs and lengthy procedures.[83]

(85) *Fourth,* the vast majority of competitors who responded to the market investigation consider that customers in Italy have a high degree of bargaining power and they exercise significant pressure on wholesalers. This holds true especially considering that there are other alternative wholesalers available in the market to whom customers can switch, and given that customers adopt a multi-sourcing strategy – primarily due to security of supply considerations –, which helps them compare prices/rebates.[84]

(86) *Finally,* all competitors who responded to the market investigation indicated that, at the very least, two or three alternative full-line wholesalers would remain in the market post-Transaction. Competitors also consider that generally the impact the Transaction might have on the market will be overall neutral, specifically in terms of number of daily deliveries, products availability, quality of the service, and reliability.[85]

5.2.3. Conclusion

(87) In light of the foregoing, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market, in relation to the horizontal overlaps in pharmaceutical wholesale distribution in Italy. Specifically, the relevant markets appear to be competitive, with a sufficient number of players remaining in these markets post-Transaction, the possibility to switch easily, and with customers exercising a high degree of buyer power over wholesalers. This holds true despite competitors mentioning that barriers to entry are high, pointing to the presence of a high number of wholesalers as one of the main barriers and, therefore, confirming the market dynamism.

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81 Q2 – Questionnaire 2 to Competitors in Pharmaceutical Wholesaling in Italy, questions 20-21.

82 Q2 – Questionnaire 2 to Competitors in Pharmaceutical Wholesaling in Italy, questions 26, 28, and 29.1.

83 Short questionnaire to Italian customers, question 8.

84 Q2 – Questionnaire 2 to Competitors in Pharmaceutical Wholesaling in Italy, question 23.

85 Q2 – Questionnaire 2 to Competitors in Pharmaceutical Wholesaling in Italy, questions 30-32.

5.3. Assessment of vertical effects

5.3.1. Market structure

(88) The Italian pharmacy market is highly fragmented. The top six pharmacy chains with more than 30 points of sales account for only 3 % of the total number of pharmacies in Italy. Those pharmacies are LloydsFarmacia (owned by McKesson), Hippocrates, Unifarma, Alliance Boots, CEP and Farmacie Italiane. The remaining 97 % of pharmacies are either independent (approx. 68 %) or grouped in virtual chains such as buying groups (approx. 29 %).[86]

(89) The turnover of the national pharmaceutical retail market amounted to EUR […] billion in 2020, and was generated by approximately 20,000 pharmacies. In 2021, McKesson's retail activities generated a turnover of approximately EUR […] million. In 2021, McKesson operated […] pharmacies and para-pharmacies ("McKesson's pharmacies"), nearly all located in the north of Italy and most of them in Lombardy and Emilia-Romagna. Of McKesson's pharmacies, […] pharmacies were owned and […] were municipal entities managed by McKesson ([…] municipal pharmacies and […] dispensaries). Additionally, McKesson has a franchise network (Lloyds) of […] pharmacies, and […] para-pharmacies (composed of […] para-pharmacies and […] retail store corners).[87]

(90) In terms of market shares of the Parties, based on the data submitted by the Notifying Party (which is not active in pharmaceutical retail distribution), McKesson's retail market share would amount to [0-5]% in value at national level. At regional level, the three regions where McKesson exceeds its national average are Emilia-Romagna ([5-10]%), Lombardy ([0-5]%) and Tuscany ([0-5]%). The assessment does not change significantly if one focuses on McKesson's strongest product segment, *i.e.* OTC products: Emilia-Romagna ([5-10]%), Lombardy ([5-10]%) and Tuscany ([0-5]%).

(91) At sub-regional level, McKesson remains [5-10]% market share in all areas of Italy but three: Bologna City ([20-30]%), Milan City North-East ([10-20]%) and Milan City South-West ([20-30]%). The assessment does not change significantly if one focuses on McKesson's strongest product segment, *i.e.* OTC products: in the three sub-regional areas above, McKesson's market share for OTCs is only slightly above the average figure[88], and apart from these areas there are only two where the [10-20]% bar is exceeded: Cremona-Lodi ([10-20]%) and Modena ([10-20]%).[89]

(92) At municipal level, the Notifying Party submits that, based on the number of pharmacies, only in four of the municipalities[90] located in the regions in which

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86 Form CO, paragraph 1649

87 Form CO, paragraphs 1661 *sqq*.

88 Bologna City ([20-30]%), Milan City North-East ([10-20]%) and Milan City South-West ([30-40]%).

89 Form CO, paragraphs 1666 *sqq*.

90 Form CO, paragraphs 1668 *sqq*.: Cremona ([60-70]%), Lissone ([30-40]%), San Giovanni Valdarno ([40-50]%) and San Lazzaro di Savena ([30-40]%). McKesson also exceeds [30-40]% of pharmacies in municipalities that can be considered less relevant for a competitive analysis as each of them only represents a fraction of their respective appropriate market: these municipalities have less than five pharmacies and between 900 and 15,000 inhabitants. Therefore, the appropriate market for each of them should also include neighbouring areas. The municipalities concerned are: Castenaso (in the province of Bologna, with […] McKesson pharmacies out of […] in total); Carugate (Milano, […]); Castelleone

Phoenix or McKesson are active at wholesale level does the individual or combined market share of Phoenix's and/or McKesson's wholesale activities and McKesson's retail activities exceed 30 %. In two cases out of four, the municipalities are relatively small. In all four cases, the pharmacies are located in strongholds of McKesson's network, near Milan and Bologna.

5.3.2. Competitive analysis

Notifying Party's view

(93) The Notifying Party submits that negative vertical effects can be ruled out, for both input and customer foreclosure, particularly in view of McKesson's low market share at national level in the market for retail pharmaceutical distribution.

(94) *Customer foreclosure*: the Notifying Party submits that the merged entity would not have the ability to foreclose other wholesalers from accessing a sufficient customer base of pharmacies, as McKesson represents a low share of the total demand for pharmaceutical and para-pharmaceutical products in the catchment areas of the Parties' depots (on average less than [0-5]%). Such a low share does not make the exclusion of upstream rivals credible, as competing wholesalers would have sufficient alternatives to McKesson's pharmacies to sell their products.[91]

(95) Besides, the merged entity would not have an incentive to fully exclude competing wholesalers from serving its pharmacies, as they need to pursue a multi-sourcing strategy in order to avoid product shortages and maintain their competitiveness against competing pharmacies. McKesson already supplies […]% of the demand of the pharmacies it manages, and […]% of its franchisees. Phoenix supplies […] out of McKesson's 260 pharmacies, but for residual values[92]. Even if Phoenix were to increase the number of its supplies to McKesson's pharmacies post-Transaction, these pharmacies would not stop purchasing further volumes from other wholesalers as part of their multi-sourcing strategy[93].

(96) *Input foreclosure*: the Notifying Party submits that the merged entity would not have the ability to foreclose other pharmacies from the needed input by refusing to supply them, since it would lack a sufficient degree of market power in the upstream market. The Parties' combined wholesale market share would be approximately [20-30]% at national level. Therefore, there would be a sufficient number of alternative suppliers with sufficient spare capacities throughout Italy. Sufficient alternatives would remain available also in catchment areas where the Parties' market shares

(Cremona, […]); Venegono Inferiore (Varese, […]); Azzano San Paolo (Bergamo […]); S.Vincenzo/Galliera (Bologna, […]); Cremella (Lecco, […]); Gerre De'Caprioli (Cremona, […]); and Porto D'Adda (Monza Brianza, […] out of an unspecifed number). And regarding para-pharmacies: Gadesco Pieve Delmona (Cremona […]), Serravalle Scrivia (Alessandria […]) and Vittuone (Milano […]).

91 Form CO, paragraphs 1676 *sqq*.

92 Form CO, paragraph 1672. A turnover of EUR […] million in 2020, *i.e.*, approx. […]% of PHOENIX's overall wholesale turnover. McKesson's pharmacies are not members in PHOENIX's pharmacy partnership program Valore Salute.

93 Form CO, paragraph 1675.

would be above 30 % (a threshold only slightly exceeded by the Parties' market shares)[94].

(97) The Notifying Party adds that McKesson generates the majority (roughly […]%) of its wholesale sales with third-party pharmacies, and that the merged entity would not have the incentive to pursue an input foreclosure policy towards pharmacies other than McKesson's, due to its negligible market share of pharmacies in Italy.

Commission's assessment

(98) Despite inconclusive responses to the market investigation in relation to any strategies of input or customer foreclosure, as reported in more detail below, the Commission considers that the Transaction will not give rise to any vertical effects, especially due to the merged entity's low market shares in retail distribution, including under the narrowest possible market definition.

(99) *Customer foreclosure – ability*: the Commission considers that, due to McKesson pharmacies' low share of demand even in the catchment areas served by the Parties' depots, excluding upstream rivals from distributing their pharmaceutical products to the merged entity's pharmacies would not enable the merged entity to restrict access to a significant customer base. Besides, given the high levels at which McKesson already supplies its own pharmacies as primary wholesaler, in most cases the exclusion of rival suppliers would not be significant compared to the pre-merger situation. This is confirmed by the four upstream competitors who responded to the market investigation; they indicated not to report any turnover with McKesson's owned pharmacies, even though they are amongst the largest wholesalers in Italy.[95]

(100) *Customer foreclosure – incentive*[96]: the Commission considers that customer foreclosure would not be profitable for the merged entity. Even if the merged entity were to increase its wholesale prices to its pharmacies for products whose prices are not regulated, and if pharmacies were to pass on such increases in their retail prices to consumers, then the merged entity's low retail market share and the dynamic competitive landscape it faces would lead to a loss of customers to competitors. The merged entity's pharmacies will also need to continue their multi-sourcing strategy, a well-entrenched practice in Italy, in order to ensure full and timely availability of products.

(101) *Input foreclosure – ability*: despite split responses[97] by customer pharmacies to the market investigation, the Commission considers that it is highly unlikely that, post-Transaction, the merged entity would have the ability to profitably restrict supplies,

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94 Form CO, paragraphs 1674-1675.

95 Q2 – Questionnaire 2 to Competitors in Pharmaceutical Wholesaling in Italy, question 36. This factual response contradicts and undermines the same respondents' assertion that the merger would provide the merged entity the ability (4 out of 4) and incentive (3/4) to foreclose them from its owned pharmacies (one respondent at least confused foreclosure and increased competitiveness from the merger) (questions 38-40).

96 The analysis in relation to incentive to foreclose is provided merely for completeness, since it is already established that the merged entity lacks the ability to foreclose.

97 Short questionnaire to Italian customers, questions 20-21. The market investigation results were rather inconclusive in relation to any risk of input foreclosure, since the slight majority of respondent pharmacies indicated that input foreclosure might happen, while just a slightly smaller sub-set indicated that they see the strategy as unlikely.

raise prices or deteriorate the quality of service when supplying downstream competitors. First, there are minimum regulatory requirements below which wholesalers cannot go (*e.g.*, regulated prices for Rx; delivery within 12 hours from the order placement). Second, based on the merged entity's market share in the wholesale market and the dynamic competitive landscape it faces, the merged entity's customers will have several alternatives to meet their needs at better market conditions prevailing pre-Transaction (*e.g.*, two deliveries per day as a *de facto* standard in most areas).

(102) *Input foreclosure – incentive*: the Commission considers that any strategy by the merged entity to restrict or deteriorate supply to its customer pharmacies would be economically impracticable, because its market share downstream (pharmacies) is low, and much lower than its share for wholesale distribution. Consequently, a full input foreclosure strategy (*i.e.*, reserving its wholesale supply to its own pharmacies) would boil down to the merged entity forfeiting more than […]% of its potential customer base in Italy, considering that, at national level, McKesson's pharmacies only represent a moderate market share of less than [0-5]% in the downstream market. Moreover, a partial input foreclosure (*i.e.*, reducing supplies, raising prices or deteriorating the quality of service) would spur pharmacies to turn to the several existing competing suppliers active upstream for better deals. Such strategies would cause McKesson to forfeit a large part of its current customer pharmacies and would therefore not offset the costs incurred to carry them out.

5.3.3. Conclusion

(103) In light of the foregoing, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market, in relation to vertical effects between pharmaceutical wholesale and retail distribution in Italy.

6. CONCLUSION

(104) For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the functioning of the EEA Agreement. 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
Executive Vice-President