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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Sanacorp Pharmahandel GmbH
Semmelweisstraße 4
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Germany

Subject: **Case M.10141 - Sanacorp Pharmahandel / Leopold Fiebig and Gerda Nückel**
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 1 February 2021, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Sanacorp Pharmahandel GmbH ('Sanacorp') would acquire sole control of the whole of Leopold Fiebig GmbH & Co. KG ('Fiebig') and Gerda Nückel GmbH ('Gerda Nückel', and together with Fiebig the 'Target') (the 'Transaction').[3] Sanacorp is designated hereinafter as the 'Notifying Party' and together with the Target as the 'Parties' or the 'Merged Entity'.

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').

3 Publication in the Official Journal of the European Union No C 47, 10.2.2021, p.10.

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1. THE PARTIES

(2) Sanacorp is a full-service wholesaler of pharmaceuticals operating on the German market. Sanacorp is ultimately controlled by astera SA (France) and Sanacorp eG Pharmazeutische Großhandlung (Germany), which are both pharmacist cooperatives.

(3) Fiebig is a full-service wholesaler of pharmaceuticals based in Rheinstetten, operating in central and southern Germany.

(4) Gerda Nückel is the general partner of Fiebig.

2. THE OPERATION

(5) On 19 December 2020, Sanacorp entered into an agreement to purchase all shares of Fiebig and Gerda Nückel. Sanacorp therefore acquires sole control over the Target. Consequently, the Transaction would give rise to a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(6) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million[4] (the Sanacorp group: EUR 9 682 million; the Target: EUR […] million, in 2019). Each of them has a Union-wide turnover in excess of EUR 250 million (the Sanacorp group: EUR […] million; the Target: EUR […] million, in 2019). The Sanacorp group did not achieve more than two-thirds of its aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. COMPETITIVE ASSESSMENT

4.1. Market definitions

4.1.1. Product market definition

(7) Pharmaceutical wholesaling comprises the delivery of pharmaceutical products to customers such as pharmacies, hospitals or doctors (but not to end-customers) by wholesalers (as opposed to pharmaceutical manufacturers). Both full-service wholesalers (also referred to as full-liners), which aim at supplying customers with a full array of pharmaceutical products, and short-liners, which only offer a limited product range to their customers, are active in pharmaceutical wholesaling.

(8) In its decisional practice, including in its recent *Alliance / Gehe* decision, with respect to Germany specifically, the Commission concluded that pharmaceutical full-line wholesaling is a distinct product market from pharmaceutical short-line wholesaling, in particular due to the applicable legal framework.[5] The Commission

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4 Turnover calculated in accordance with Article 5 of the Merger Regulation.

5 See Commission decision of 17 August 2020 in case M.9711 - *Alliance Healthcare Deutschland AG / GEHE Pharma Handel GmbH*, para. 19, Commission decision of 4 May 2011 in case M.6044 - Alliance

also considered further segmenting of the market based on (i) the products supplied (prescription medicine, over-the-counter products, generics or parallel imports etc.), and/or (ii) the customer supplied (retail pharmacies, doctors or hospitals).[6]

(9) The results of the market investigation did not provide any reason to depart from these precedents. While wholesalers (including the Notifying Party) indicate that the relevant market should include direct supplies by pharmaceutical manufacturers, customers' feedback was mixed, with a significant number of respondents indicating that they only procured a small share of their supply directly from manufacturers (between 5% and 20%) and a majority indicating that they would not be able to source significantly more.[7] According to a submission by a market participant, in addition to pharmacies, doctors and hospitals (identified in precedents), short-line wholesalers and parallel importers can represent additional categories of customers.[8]

(10) As a result of the above, for the purposes of the decision, the Commission considers that the relevant product market is the wholesale supply of pharmaceutical by full line wholesaler. Whether such a market should be segmented based on the type of product or customer supplied can be left open as the Transaction does not raise concern regardless of the precise market definition.

4.1.2. Geographic market definition

(11) The Commission has consistently considered pharmaceutical wholesaling national or regional in scope in its decision practice. With respect to Germany specifically, the Commission has considered, including in its recent *Alliance / Gehe* decision, that the geographic scope of the market for pharmaceutical wholesaling to be 2 hours 14 minutes of driving time around the warehouses of pharmaceutical wholesalers, in line with the practice of the German competition authority. [9]

(12) The results of the market investigation did not provide any reason to depart from these precedents.[10]

(13) As a result of the above, for the purposes of the decision, the Commission considers that the relevant geographic market is delimited by a driving time of 2 hours 14 minutes from the depot of Fiebig located in Rheinstetten (Fiebig's only depot).

Boots / Andrae-Noris Zahn, para.14; and Commission decision of 19 March 2009 in case M.5433 - *Sanacorp / V.D. Linde*, para. 8.

6 See Commission decision of 17 August 2020 in case M.9711 - *Alliance Healthcare Deutschland AG / GEHE Pharma Handel GmbH*; and Commission decision of 6 April 2016 in case M.7818 - *McKesson / UDG Healthcare*, para. 15.

7 Q2 - Fragebogen Kunden, replies to question 8 and 9.

8 Email from a market participant, 4 February 2021.

9 See Commission decision of 17 August 2020 in case M.9711 - *Alliance Healthcare Deutschland AG / GEHE Pharma Handel GmbH*, para. 27; and Commission decision of 19 March 2009 in case M.5433 - *Sanacorp / V.D. Linde*, paras. 9-10.

10 Q1 - Fragebogen Wettbewerber, replies to question 4.

4.2. Competitive assessment

4.2.1. Horizontal effects

(14) The Transaction gives rise to one horizontally-affected market for full-line pharmaceutical wholesaling to pharmacies in the area of 2 hours and 14 minutes driving time around the Fiebig depot in Rheinstetten, Germany.[11]

(15) As shown in Table 1, the Merged Entity would have a market share of [20-30]% in the affected market. A number of significant competitors would remain, namely Phoenix with [20-30]%, Noweda with [10-20]%, Alliance Healthcare with [10-20]% and Gehe with [10-20]%. While Alliance Healthcare and Gehe continue to operate with separate branch offices and brands, Alliance Healthcare acquired sole control over Gehe in 2020.[12]

Table 1 - Market shares - Full line wholesaling to pharmacies in the area around Fiebig's Rheinstetten depot, by value (Q1-Q3 2020)[13]

Market shares (Q1-Q3 2020)	
Sanacorp	[20-30]%
Fiebig	[5-10]%
Merged Entity	***[20-30]%***
Phoenix	[20-30]%
Noweda	[10-20]%
Alliance Healthcare	[10-20]%
Gehe	[10-20]%
AEP	[0-5]%

Source: Form CO, Table no.7.

(16) All competitors listed in Table 1 operate depots in the relevant geographic market around Fiebig's Rheinstetten depot and supply pharmacies in the affected market several times a day (with the exception of AEP).

(17) Competitors presently active in the area around Fiebig's Rheinstetten depot submit that they have available capacities to increase supplies to existing customers as well as to start supplying new customers.[14]

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11 No affected market would arise when looking at the supply of pharmaceuticals to doctors and hospitals. Sales of the Parties to hospitals and extern hospital pharmacies account for less than 1% of their average monthly sales. Further, if considering a further segmentation according to the category of product supplied (i.e. prescription medicine, over-the-counter products, generics or parallel imports etc.), the Notifying Party submits that market shares would not meaningfully diverge from the overall market (see Table 1). Therefore, the outcome of the competitive assessment would also apply in case of further segmentation of the product market by type of product or customer.

12 See Commission decision of 17 August 2020 in case M.9711 - *Alliance Healthcare Deutschland AG / GEHE Pharma Handel GmbH*.

13 No complete data available for 2020. The Parties' combined market share in 2019 does not materially differ from the Q1-Q3 2020 combined market share.

14 Q1 - Fragebogen Wettbewerber, replies to questions 7 and 8.

(18) Customers (pharmacies) submit that they have access to sufficient alternative full-line wholesale suppliers other than the Parties. All pharmacies responding to the market investigation explain that they have access to at least two full-line wholesalers other than the Parties, which could supply them at customary market conditions. A majority of responding pharmacies even states that they have access to at least four such alternative full-line wholesalers.[15]

(19) A majority of pharmacies responding to the market investigation further submits that they would be able to switch full-line wholesaler without significant effort.[16] In fact, a majority of pharmacies responding to the market investigation reports having switched from one to another full-line wholesaler in the past five years.[17]

(20) It therefore appears that effective alternative full-line wholesale suppliers are available to pharmacies in the region around Fiebig's Rheinstetten depot.

(21) In addition to this constraining influence of competitors, certain market characteristics would, in any case, significantly limit the Merged Entity's ability to exert market power post-Transaction.

(a) Firstly, full-line pharmaceutical wholesaling in Germany is highly regulated. Wholesalers require a wholesale licence to operate and the price of prescription pharmaceuticals (which according to the Parties account for [80-90]% of the sales in the pharmaceutical wholesale sector),[18] is subject to regulation.[19] This view of market dynamics is shared by competitors of the Parties. One competitor in this context notes that '*in particular the pharmaceutical price regulation sets a narrow framework for the pricing ability in the main product range of prescription pharmaceuticals*'.[20]

(b) Secondly, direct supply to pharmacies from pharmaceutical manufacturers as well as short-line pharmaceutical wholesalers exerts some degree of competitive pressure on full-line wholesalers. A competing full-line wholesaler submits (as the Notifying Party) that direct deliveries from pharmaceutical manufacturers to pharmacies have increased significantly and therefore represent significant competition for wholesalers.[21] A majority of responding pharmacies submit that they are sourcing more than 5% directly from manufacturers (with some even sourcing between 10% and 20%, and one respondent between 20% and 30% directly).[22] Similarly, short-line wholesalers that may be focused on a specific product segment of the market to some extent also compete for the supply to pharmacies with full-line wholesalers.[23] While direct deliveries and supply by short-line wholesalers cannot provide the same service to pharmacies as full-line wholesalers

15 Q2 - Fragebogen Kunden, replies to question 12.
16 Q2 - Fragebogen Kunden, replies to question 10.
17 Q2 - Fragebogen Kunden, replies to question 9.
18 Form CO, paragraph 137.
19 According to the Arzneimittelpreisverordnung.
20 Q1 - Fragebogen Wettbewerber, reply to question 11. Courtesy translation. The original German text reads: '*Insbesondere die Arzneimittelpreisverordnung setzt einen engen Rahmen für die Preisgestaltung im dominierenden Sortimentsbereich der verschreibungspflichtigen Arzneimittel*'.
21 Q1 - Fragebogen Wettbewerber, reply to question 12.
22 Q2 - Fragebogen Kunden, replies to question 8.
23 See e.g. Form CO, paragraphs 109 and 130.

(e.g. multiple deliveries per day of entire product portfolio – a service that pharmacies are reliant upon, even if they purchase some products directly), they constitute a limited out-of-market constraint.

(c) Thirdly, all competing full-line wholesalers responding to the market investigation submit that customers have significant bargaining power.[24]

(22) Overall, competitors and customers responding to the market investigation do not expect the Transaction to have a negative impact on their business or on competition in the market.

(23) While a majority of competitors expects the Transaction to lead to more intense competition, only one competitor expects the Transaction to have a negative impact for its business.[25] A large majority of customers expressing an opinion expect the Transaction to have a neutral or positive impact on their business.[26] More specifically, a majority of customers also do not expect negative developments with respect to the service level and the number or cost of deliveries.[27]

(24) Therefore, based on the considerations in this Section 4.2.1, in particular the presence of a number of effective competitors that customers could readily switch to and, in any case, the limited pricing power of full-line wholesalers in Germany, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to full-line pharmaceutical wholesaling in the Region around Fiebig's Rheinstetten depot.

4.2.2. Foreclosure effects

(25) Both Parties are active, to a limited extent, in the supply of pharmaceuticals to short-line wholesalers and parallel importers. For at least some products, short-line wholesalers and parallel importers may be unable to source directly from pharmaceutical manufacturers. As a result, a vertical relationship may arise between the full-line wholesaling of pharmaceutical products (upstream) and the short-line wholesaling of pharmaceuticals and parallel importing (downstream).[28] However, such potential vertical relationships do not raise any competition concern in this case.

(26) Firstly, the Parties do not have the ability to foreclose short-line wholesalers and parallel importers. Pursuant to the Commission Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Non-Horizontal Merger Guidelines"),[29] for input

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24 Q1 - Fragebogen Wettbewerber, replies to question 9.

25 Q1 - Fragebogen Wettbewerber, replies to questions 15.1 and 16.

26 Q2 - Fragebogen Kunden, replies to question 13.

27 Q2 - Fragebogen Kunden, replies to questions 14 and 15.

28 A company active as a short-line wholesaler and parallel importer contacted the Commission and raised a concern in relation to the proposed Transaction. The company explained that it had been supplied by Fiebig with pharmaceutical products, but that Fiebig recently terminated the supply relationship with reference to the proposed Transaction. The company further explained that it would likely be unable to find alternative suppliers for these pharmaceutical products, as many pharmaceutical manufacturers or full-line wholesalers are not willing to supply short-line wholesalers/parallel importers. See Email from a market participant, 4 February 2021.

29 OJ C 265, 18.10.2008, p. 6.

foreclosure to be a concern,[30] the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market.[31] The Merged Entity's market share in a hypothetical upstream market for the full-line wholesale supply to short-line wholesalers and parallel importers is limited (below 30%). In any case, a number of other full-line wholesalers active in Germany submit that they do supply non-pharmacy customers, (e.g. short-line wholesalers), and would in principle be able to supply further such customers.[32]

(27) Secondly, the Parties would not have an incentive to foreclose short-line wholesalers and parallel importers from access to pharmaceutical products. While full-line wholesalers like the Parties compete to some extent with short-line wholesalers, the Parties are ultimately not active on the short-line wholesaling or parallel import markets.[33]

(28) In any case, given the limited activities of the Parties with respect to sales to short-line wholesalers and parallel importers (less than [0-5]% of each of Sanacorp's and Fiebig's total sales),[34] a termination of supply could not be expected to have a meaningful impact on competition and on end-customers of pharmaceutical products.

(29) Therefore, based on the considerations in this Section 4.2.2, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to input foreclosure of short-line wholesalers and parallel importers.

5. CONCLUSION

(30) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with 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

30 As the Parties are not present on the downstream markets and the market participant expressing concerns expressed concerns in relation to input foreclosure, the remainder of the section will only assess potential input foreclosure strategies and not customer foreclosure.

31 Non-Horizontal Merger Guidelines, para. 35.

32 See Emails from competitors, 9, 10 and 12 February 2021.

33 This also applies to the situation of the undertaking raising concerns in this case. […].

34 The turnover generated by Fiebig with the company raising concerns in this case is even more limited, […].