Decision

Proposed acquisition of Admenta UK Limited by Aurelius Elephant Limited (C-033)

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Jersey Competition Regulatory Authority
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1. Summary

1.1 Aurelius Elephant Limited (**Aurelius**) proposes to acquire the entire issued share capital of Admenta UK Limited (**Admenta**) from McKesson Global Procurement & Sourcing Limited (**MGPSL**). The proposed transaction has been notified to the Jersey Competition Regulatory Authority (the **Authority**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the **2005 Law**).

1.2 The Authority has determined that the proposed transaction will not lead to a substantial lessening of competition in any relevant market and hereby approves the notified transaction.

2. The Notified Transaction

2.1 On 6 December 2021, the Authority received an application from Aurelius and MGPSL for the proposed sale of the entire share capital of Admenta to Aurelius.

2.2 The Authority registered the application on its website with a deadline for comments of 20 December 2021. No submissions were received.

3. The Parties

The Purchaser

3.1 Aurelius Elephant Limited is a private company incorporated in England with company number 13017370. It is part of a private equity group that invests in companies with a view to facilitating growth in the acquired targets with the ultimate aim goal of providing return to investors.

3.2 The parent entity of Aurelius Elephant Limited is Aurelius European Opportunities IV SCA SICAV-RAIF, a limited partnership under Luxembourg Law acting by its general partner, Aurelius European Opportunities GP S.à r.l. (**GP**), which was registered with the Luxembourg Register of Commerce and Companies on 7 April 2021 with registered number B25778. GP is the operative active part of the Fund, manages and, therefore, controls it. 50% of the shares of GP are held indirectly by Aurelius Growth Investments S.à r.l , a Luxembourg company with limited liability, registered with the Luxembourg Register of Commerce and Companies under B204284.

3.3 GP is not dedicated to specific industries but has a certain experience in IT and business services, industrials and chemicals, lifestyle and consumer goods.[1] It is already active in Jersey in three areas with no relation to the pharmaceutical industry (namely: Ideal Shopping, a multi-channel home-shopping provider (circa [Redacted] turnover in 2020); European Imaging Group, a specialist

[1] https://aureliusinvest.co.uk/

imaging retailer (circa [Redacted] turnover in 2020); and SSE Contracting Limited, a provider of utility solutions providing specialist mechanical intellectual services (circa [Redacted] turnover in 2020)).

3.4 The rationale for this transaction is to acquire a healthcare platform in line with Aurelius' investment objectives.[2] Aurelius and its parent entity have also to date not been active in the pharmaceutical industry and while it holds special chemical companies, these are not related to pharmaceutical products. In the UK it has invested in Transform/Hospital Group which is a provider of surgical and non-surgical cosmetic procedures as well as weight-loss treatments. This results in a minor vertical relationship in the UK as Transform/Hospital Group purchases some pharmaceuticals from the wholesale division of Admenta, though there are no vertical relationships in Jersey.

The Seller

3.5 McKesson Global Procurement & Sourcing Limited is a private company incorporated in England with company number 08715001. MGPSL is ultimately indirectly majority owned by McKesson Corporation which is a public company listed on the New York Stock Exchange and incorporated under Delaware law with registered number 2417015. McKesson Corporation's activities include distributing pharmaceuticals and providing health information technology, medical supplies and care management tools. McKesson Corporation is seeking to streamline its business.

The Target

3.6 Admenta UK Limited offers various healthcare services in both the retail and wholesale markets of the UK. It is a private company with company number 03011757. In Jersey, Admenta is active in retail pharmacy (trading as Lloyds Pharmacy) via its wholly-owned subsidiary Savory & Moore (Jersey) Limited (company number 25809) and wholesale distribution of pharmaceutical products with a full range of capabilities via its wholly-owned subsidiary AAH Pharmaceuticals Limited (incorporated in England with company number 00123458).

3.7 Admenta estimates that Lloyds Pharmacy dispensed [Redacted] of all primary care prescription items in Jersey in 2020. It also estimates that it has a [Redacted] share of supply in pharmaceutical wholesale into pharmacies / hospitals in Jersey. In the UK, Admenta is active in the wholesale, retail, homecare and digital healthcare sectors.

[2] https://aureliusinvest.co.uk/news/in-its-biggest-deal-in-history-aurelius-acquires-mckesson-uk/

4. Requirement for Authority Approval

4.1 Under Article 2(1)(b) of the 2005 Law, a merger or acquisition (**merger**) occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking. On completion of the notified transaction, Aurelius will acquire all the shares in Admenta. The notified transaction therefore constitutes a merger as defined by the 2005 Law.

4.2 According to Article 20(1) of the 2005 Law, a person must not execute certain mergers or acquisitions except and in accordance with the approval of the Authority. In particular, in relation to this transaction, Article 4 of the Competition (Merger and Acquisitions) (Jersey) Order 2010 (the **Order**) provides that the merger must be notified to the Authority for approval under Article 20(1) of the 2005 Law if one or more of the parties to the proposed merger or acquisition has an existing share of 40% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey.

4.3 According to information provided by McKesson Corporation, Admenta has a [Redacted] share of supply in the pharmaceutical wholesale market into pharmacies/hospitals in Jersey. Therefore, on the basis of the information submitted by the parties to the transaction, the transaction requires the approval of the Authority prior to its execution.

5. Market Definition

Approach

5.1 Under Article 22(4) of the 2005 Law, the Authority must determine if the merger would substantially lessen competition in Jersey or in any part of Jersey. As an initial step, the Authority will identify the markets which are likely to be affected by the merger since market definition provides a framework within which the competitive effects of a merger can be assessed.

5.2 When defining a market, the Authority may take note of its own previous decision-making practice and/or market definitions applied by other competition authorities. These previous decisions are not precedents and are not binding, either on the merging parties or on the Authority. Competition conditions may change over time, changing the market definition, and market definition will always depend on the prevailing facts.[3]

[3] This approach is consistent with that taken under EU law – see, for example, Joined Cases T-125/97 and T-127/97 [2000] ECR II-01733, paragraphs 81-82. Article 60 of the 2005 Law requires the Authority to attempt to ensure that so far as possible questions arising in relation to competition are dealt with in a manner that is consistent with the treatment of corresponding questions arising under European Union law in relation to competition within the European Union.

Views of the Parties

5.3 The Parties consider there to be two product markets for consideration, namely the distribution of pharmaceutical products for the retail sector and wholesale sector respectively.

5.4 The Parties consider the proper geographic market for each of the product markets identified to be the national market which in the present case includes the UK and the Channel Islands on the basis that the majority of wholesale and retail distributors are UK based companies that include Jersey as part of the UK market for the distribution of pharmaceuticals.

Authority Consideration

5.5 The relevant product market is defined primarily by reference to the likely response of consumers and competitors[4]. It will comprise products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the product's characteristics, prices and intended use. An undertaking cannot have a significant impact on the prevailing conditions of a market if customers can easily switch to other service providers.

5.6 In previous cases, the European Commission has considered the distribution of wholesale and retail pharmaceuticals and potential segmentation of those markets[5].

5.7 The markets proposed by the Notifying Parties are broadly in line with this approach, and the Authority considers the precise market definition can be left open on this occasion. This is because, as outlined below, the proposed merger would not result in a substantial lessening of competition in Jersey on any reasonable basis.

6. Effect on Competition

Approach

6.1 After defining the relevant market, the Authority considers the respective market shares of the competitors in that market, both before and after the proposed transaction. These shares can be used as an indication of the overall level of market concentration which will be brought about as a result of the merger.

6.2 The analysis will consider whether the merger creates or enhances the ability or incentive to exercise market power, either unilaterally or in co-ordination with competitors, and whether other market forces (such as the entry of new competitors or countervailing power of customers)

[4] JCRA Guideline 7 – Market Definition.

[5] See for example: M.9711 - Alliance Healthcare Deutschland / GEHE Pharma Handel, para 6, and M.7818 - McKesson / UDG Healthcare, para. 15-18

will eliminate this risk. The assessment will also consider any pro-competitive effects or efficiencies that may result from the merger.

6.3 For horizontal mergers, the Authority can assess two potential types of anti-competitive effects – unilateral effects (i.e. the ability of the merged entity to raise prices unilaterally) and co-ordinated effects (i.e. the ability of the merged entity to raise prices either the implicit or explicit co-operation of other competitors). For vertical or conglomerate mergers, the Authority's focus will be on assessing whether the merged entity would have the ability or incentive to foreclose the market to competitors, either by denying access to important inputs upstream, or by denying access to 'routes to market' downstream. Another concern with conglomerate mergers is the ability to condition sales in a way that links products in separate markets together (through tying or bundling).

6.4 When assessing mergers, the Authority will have regard to the guidelines produced by the European Commission. It may also consider the substantive merger guidelines applied by the Competition and Markets Authority in the UK, as well as those of other competition authorities.

View of the parties

6.5 According to information provided by the parties, Admenta has an estimated market share of [Redacted] in the pharmaceutical wholesale market into pharmacies/hospitals in Jersey. Lloyds Pharmacy was estimated to have dispensed circa [Redacted] of all primary care prescription items in Jersey in 2020.

6.6 Aurelius is also active in Jersey but not in same markets as Admenta. It is active in the provision of multi-channel home shopping, specialist imaging and mechanical intellectual services.

6.7 As there is no overlap in the activities of the Parties and there are no non-vertical relationships, the Parties submit that the Transaction is not capable of substantially lessening (or indeed lessening at all) competition in Jersey or any part of Jersey.

Authority Consideration

6.8 Given that there are no horizontal overlaps between the activities of the Parties, there are no upstream or downstream relationships or other links between their activities, and there is no ability to leverage any potential market power from one market to the other, the notified transaction will not give rise to a substantial lessening of competition on any reasonable basis.

7. Decision

7.1 On this basis, the Authority concludes that the proposed acquisition of Admenta by Aurelius will not substantially lessen competition in Jersey or any part of Jersey; and the transaction is therefore approved under Article 22(1) of the 2005 Law.

17 January 2022 **By Order of the Jersey Competition Regulatory Authority**