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## Competition - Portugal

### Pharmaceutical sector under scrutiny

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### Introduction

On August 6 2012 the Competition Authority was notified of the acquisition of sole control over Pharmexx GmbH (a German group with activities in several countries, including Portugal) by United Drug plc (part of an Irish group). Pharmexx is active in Portugal through Pharmexx Portugal, Lda and Kironfarma-Produtos Farmacêuticos, Lda.<sup>(1)</sup>

The United Drug group, which is not active in Portugal, provides marketing services to companies in the medical and pharmaceutical sector, notably rendering specialised services in sales, marketing, supply and packaging of medical and pharmaceutical products. The target companies of the Pharmexx group in Portugal provide services to pharmaceutical companies, including promotion and marketing of medicines, recruitment and selection of specialised workforces and wholesale supply of medicines.

The Spanish and Irish competition authorities were also notified of the transaction.

### Relevant markets

The authority used this case to underscore several of the relevant markets which must be taken into account when dealing with transactions in the pharmaceutical sector. Moreover, the following relevant markets are now established in the decisional practice of the Competition Authority in relation to the pharmaceutical sector:

- Contract sales outsourcing market – this includes the provision of consultancy and information services to healthcare professionals in relation to product characteristics and methods to enhance product marketing and the profile of consumers, as well as the provision of an outsourced workforce to the pharmaceutical industry.<sup>(2)</sup>
- Health management service market – this includes the provision of consultancy services accompanied by specialists, such as specific product assessments, market and competition appraisals and workshops addressed to doctors and patients, as well as the direct monitoring of patients taking prescribed medicines.<sup>(3)</sup>
- Brand management market – this comprises consultancy assistance in the promotion of new medicines, medical devices and therapeutic methods and assistance in the launch of established products as over the counter (OTC) medicines.<sup>(4)</sup>
- Wholesale supply of medicines market – this is subdivided into:
  - wholesale market of medicines subject to medical prescription and reimbursement by the national health service and OTC medicines subject to reimbursement by the national health service; and
  - OTC medicines not reimbursed by the national health service.<sup>(5)</sup>

All markets were defined as having a geographic dimension equivalent to the Portuguese territory, based on, among other things, the fact that the referred activities are related to sales or prescriptions of medicines in the Portuguese territory, and taking into account specific patterns of consumption and demand profiles, as well as the regulatory and legal framework which varies from country to country.

### Main findings

According to the authority's competitive assessment, Pharmexx had a significant market share – above 60% – in the contract sales outsourcing market, followed by medium and small players such as Galileu, Quítilis and Prosetwin.

In the health management service market, Pharmexx held the second position at the national level, with a market share in the range of 20% to 30% (the main player being Mondial Assistance, with a market share of between 70% and 80%). Best Doctors and Novexem were also identified as competitors in this market.

In the brand management and wholesale distribution of medicines markets, the target had a negligible position, with a market share below 10%. The authority stated in this context that the brand management market was characterised by a significant number of small and medium-sized pharmaceutical companies. Furthermore, in relation to the wholesale distribution of medicines, the authority recognised that Pharmexx was confronted in Portugal with the competition of large operators, such as Alliance Healthcare and several cooperatives dedicated to the wholesale distribution of medicines.

Due to the absence of a horizontal overlap between the parties to the transaction in any of the defined relevant markets, the authority concluded that the transaction created no significant impediment to effective competition in any of the above-

mentioned markets.

### Comment

The authority's merger review process in this case leads to the conclusion that the Portuguese pharmaceutical sector, from a competition law perspective, incorporates several relevant markets, including contract sales outsourcing, health management services, brand management and wholesale supply of medicines.

The decision, which was issued within 18 working days of the notification date, also illustrates the authority's sound knowledge of the pharmaceutical market.

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### Endnotes

- (1) The merger procedure was registered as Case 36/2012, United Drug/Pharmexx.
- (2) In this market definition, the Competition Authority took into account its past merger practice in Cases 15/2003 (IMS Health/Azyx), 64/2008 (Magnum/APS Farma APS) and 51/2010 (Explorer Fund/Totalmídia).
- (3) *Id.*
- (4) *Id.*
- (5) The Competition Authority based this market definition on Cases 80/2005 (Farindústria, JMPII, Alliance Santé/Alliance Portugal), 76/2007 (Udifar/Codifar/União) and 17/2010 (Alliance Healthcare/Medimadeira, Funchalfar).

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