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Serial Acquisitions and Industry Roll-ups – Note by Romania

6 December 2023

This document reproduces a written contribution from Romania submitted for Item 11 of the 141st OECD Competition Committee meeting on 5-8 December 2023.

More documents related to this discussion can be found at
www.oecd.org/competition/serial-acquisitions-and-industry-roll-ups.htm.

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Overview

1. The pharmaceutical retail sector, the private medical services sector and the food retail market are among the sectors that have grown significantly over the last years in Romania. These sectors are characterized by numerous acquisitions that have led to the strengthening of the market position of certain players.
2. In Romania, the retailing of medicines is carried out only through pharmacies, local distribution offices and drugstores. The establishment of a pharmacy in urban areas is based on the number of inhabitants, proven by the certificate issued by the local public administration authority, as follows:
 1. in the capital city Bucharest, a pharmacy per 3,000 inhabitants;
 2. in the county residence cities, a pharmacy per 3,500 inhabitants;
 3. in the other cities, a pharmacy per 4,000 inhabitants.
3. The demographic criterion has been used for the authorization of new pharmacies in urban areas since 1994. The objective of the demographic restriction laid down in the Pharmacy Law is to ensure a safe and high-quality supply of medicinal products to the population by preventing the migration of community pharmacies from rural areas into urban areas.
4. The Romanian Competition Council (RCC) has taken numerous steps to eliminate the demographic criterion. RCC *emphasized* that the demographic criterion is a barrier to market entry, which leads to limiting the number of pharmacies. Therefore, the number of economic operators entering the market is less than the number of economic operators that would have entered in the absence of regulation, affecting competition on the market. Access regulation also affects consumers, as a general rule competition being *an incentive for companies to excel*, thereby fostering innovation, diversity of supply and attractive prices for consumers.
5. Considering the existence of the demographic criterion, the organic development of a pharmacy chain is impossible, given that in the vast majority of cities already operate a greater number of pharmacies than would be possible by applying the demographic criterion¹. Therefore, the market is quasi-closed for any new opening, except for takeovers.
6. Pharmacies that are part of strong international groups with superior financial possibilities are active on the Romanian market. Considering the limited number of licenses, pharmacy chains choose to buy other pharmacies to develop their network. Therefore, the limitation of the number of licenses has led to an artificial increase in the price at which a pharmacy is traded, the license being part of the trade fund of the purchased pharmacy and often representing the largest part of the final purchase price.
7. Therefore, a vertically integrated pharmacy chain, part of a powerful group, may acquire the activity of a pharmacy located in a commercially uninteresting area or space and may decide to move its location to a more valuable area in the same city. On the other

¹ In 1999 - 2011, a legal provision was in force that allowed pharmacies to be authorized by exception from the demographic criterion, in shopping centers and train stations.

hand, if a small pharmacy wishes to expand, it does not have the possibility to pay the price that an integrated international group is willing to pay.

8. However, considering that the vertical integration of pharmacies and wholesalers is allowed and there is no limitation on the number of pharmacies that can be owned by the same group, combined with the restrictions imposed by the demographic criterion, the pharmacy market in Romania has experienced a continuous aggregation, large pharmacy groups strengthening their positions on the market, by acquiring smaller competitors. Similarly, the market has also consolidated at the distribution level.

9. In those market conditions, the removal of the demographic criterion could lead to a change in the behavior of distributors on that market. Vertically integrated distributors could choose to limit the access of independent pharmacies to medicines, thus destabilizing the power of small pharmacies to compete with vertically integrated pharmacies. In the same context, vertically integrated pharmacies could open new pharmacies in locations close to independent pharmacies and rely on marketing campaigns to attract customers. By combining these 2 actions, in a relatively short period, independent pharmacies may be forced to cease their activity and this may lead to reduced competition in the pharmaceutical retail market. Also, without the demographic criterion, the value of the license would decrease, putting additional pressure on independent pharmacies.

10. In the context of maintaining the demographic criterion, it can be considered that the market concentration trend will be maintained, as the pharmacy chains will continue to make purchases. However, this consolidation trend can be considered to be less aggressive than in the absence of the demographic criterion. Moreover, it is worth noting that the Romanian Competition Council can only block development through acquisitions and not organic development, which could prevail if the demographic criterion is removed.

11. Only concentrations that exceed certain value thresholds must be notified to the RCC. The authority controls the concentrations between undertakings, when the aggregate turnover of the undertakings involved in the operation exceeds 10.000.000 euros and when at least two of the undertakings involved have achieved on the Romanian territory, each separately, a turnover higher than 4.000.000 euros. The use of quantitative thresholds creates an objective test, which is generally easy to apply and meets the need to determine in a rapid and predictable manner whether a concentration should be notified and do not provide any indication, even prima facie, of the existence of market power on the side of the merging parties.

12. Also, according to the Competition Law, if two or more transactions take place between the same persons or undertakings within a two-year period, they will be treated as one and the same merger arising on the date of the last transaction.

13. The existing instruments does not allow the Romanian Competition Council effectively to control transactions between companies whose turnover figures are below these thresholds. Thus, if a transaction does not meet the stipulated turnover thresholds, the authority will lack jurisdiction to scrutinize the merger and the parties are free to proceed with the acquisition. For example, during 2018-2021, an important pharmacy chain, acquired over 70 pharmacy licenses, transactions that were not subject to the notification provisions.

14. Considering that most of the time the turnover of a pharmacy is below the threshold of 4.000.000 euros, undertakings strengthen their position on the pharmaceutical retail market through successive small purchases, transactions that do not qualify for examination. Thus, the potential for competitive harm, including through increased concentration and market power, may not be able to be adequately addressed by the authority under existing merger regime. Also, the existence of the demographic criterion

contributed to the increase in the number of acquisitions in which large competitors bought relatively small players, leading to a steady increase in concentration.

15. Serial acquisitions' potential anticompetitive effects are mostly comparable to those of a horizontal merger, i.e. a strengthening of market power due to the elimination of an important competitive constraint, with, in turn, higher prices for consumers and/or lower quality offered by the merged entity.

16. The Romanian pharmacy retail market is characterized by the presence of numerous local and international players who have cumulatively owned, in the period of 2015-2022, between 7700 and 8100 pharmacies. Over the last years, the pharmacy market has changed significantly, there has been vertical and horizontal consolidation as various acquisitions were made by major European players. For example, Dr Max Group acquired A&D Pharma Group, a group which undertakes wholesale and retail activities with pharmaceutical and para-pharmaceutical products, Phoenix Group bought the pharmacy chain Help Net and the distributor Farmexim. Dr Max Group also, acquired the pharmacy chain Richter and the distributor Pharmafarm.

17. In 2020, the five most important pharmacy chains² in Romania represented about 29% of the retail market, increasing compared to 2015 when the same chains represented about 21%. These chains have strengthened their position on the market, mainly through the acquisition of smaller competitors. On the one hand, in 2020, most pharmacies were purchased by Help Net, with 95% of the added pharmacies coming from transactions subject to the control of the Competition Council. On the other hand, in the same year, none of the transactions by which Dr Max expanded the number of pharmacies owned were subject to the notification provisions.

18. Between 2018-2022, the authority had concerns that three mergers may significantly affect competition on the retail market of pharmaceutical and para-pharmaceutical products. These three problematic mergers were nevertheless approved, with specific conditions. In 2018, the authority approved the acquisition of A&D Pharma Group by Dr Max Group, Dr Max Group divested 18 Arta pharmacies (owned by the acquiring group) located in Bucharest and Timișoara. In 2020, Help Net (Phoenix Group) divested one³ Remedia pharmacy located in Bucharest and in 2022 Dr Max Group divested 3⁴ Richter pharmacies located in Bucharest, Oradea and Baia Mare in order to takeover Gedeon Richter Farmacia SA (an undertaking active on the retail market of pharmaceutical products) and Pharmafarm SA (an undertaking active on the wholesale market of pharmaceutical products).

19. Therefore, the pharmacy industry has undergone substantial changes over the last years. Small, serial acquisitions and notified mergers have resulted in a market dominated by large pharmacy chains.

20. The main pharmacy chains in Romania are Catena, Dr Max, Help Net, Dona and Ropharma. These pharmacies are mainly supplied from distributors that are part of the same group. For example, Catena acquires products from its distributor Fildas Trading, Dr. Max acquires products from its distributor Mediplus, HelpNet acquires products from its distributor Farmexim (Phoenix Group) etc. These distributors together with Alliance Healthcare are the top 4 players on the Romanian pharmaceutical distribution market.

² Catena, Dr Max, Help Net, Dona and Ropharma.

³ This transaction involved the purchase of 63 pharmacies.

⁴ This transaction involved the purchase of 94 pharmacies and a pharmaceutical wholesaler.

21. Therefore, the most important distributors are selling medicinal products both to pharmacies within their own group and to third-party pharmacies. This dualism can be problematic, if the distribution market will continue its concentration trend, if integrated distributors choose to offer higher discounts or better conditions to pharmacies in their own group. If these pharmacies would benefit from better conditions it could turn into a competitive advantage that these pharmacies would acquire over independent pharmacies.

22. Pharmacies that are part of a group tend to be supplied mainly from the distributor with which they are vertically integrated, thus being able to obtain better prices, as well as a mix of products, which allow them to compete more effectively on the market. In order to obtain similar benefits to those obtained by a chain pharmacy, an independent pharmacy should purchase most of the products from the same wholesaler. This approach could make it possible to obtain comparable discounts, as well as essential medicines.

23. In 2021, the 10⁵ main undertakings operating on the wholesale market of pharmaceutical and para-pharmaceutical products captured 86% of this market. The integration of the wholesale activity of pharmaceutical and para-pharmaceutical products with the retail activity of these products is a common phenomenon in the pharmaceutical industry in Romania. Thus, out of those 10 distributors, in 2021, 7 of them had pharmaceutical retail units in their groups. In addition, 2 of these 7 distributors run loyalty programs addressed to independent pharmacies. Also, among these 10 distributors, there is a third distributor that runs loyalty programs, but it does not have its own pharmacies. Therefore, on the Romanian market there are 3 distributors that run loyalty programs: Mediplus – Dr Max Group (Respiro program), Alliance Healthcare (Alphega program) and Farmexim – Phoenix group (Benefica program).

Respiro program – Mediplus - Dr Max Group

- was launched in Romania in 2016;
- pharmacies enrolled in this program can receive additional discounts, better payment terms (for certain portfolios), as well as access to a series of services, such as training programs, category management, operational discounts for water dispensers, furniture, automobile fuels, electricity;
- in 2022 there were more than 900 pharmacies included (group pharmacies are not included in the Respiro program).

Alphega program - Alliance Healthcare

- Alliance Healthcare does not own pharmacies, is not vertically integrated;
- was launched in Romania on 2016;
- Alliance Healthcare acts as a franchisor for the participating pharmacies;
- Alliance Healthcare grants member pharmacies benefits such as: commercial know-how (e.g. methods of organizing pharmacy spaces, staff training programs, management and reporting procedures, management policies), the right to use the Alphega brand, the right to use specific equipment, as well as assistance and guidance for the successful operation of the pharmacy.

⁵In Romania, there are 362 authorized wholesale distribution units, but given the fact that each distributor owns several warehouses in order to ensure distribution at the national level, in fact a smaller number of distributors are active on the wholesale market.

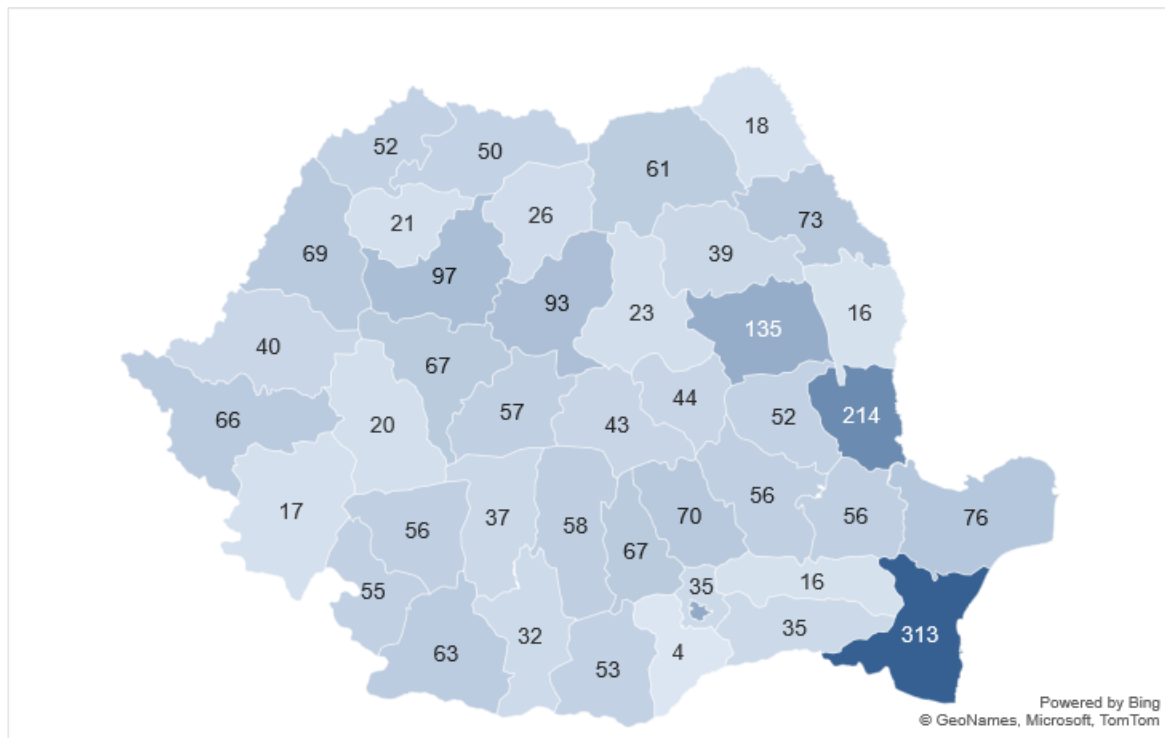
- in 2022 there were more than 800 pharmacies included.

Benefica program – Farmexim - Phoenix Group

- started in Romania in 2019;
- the Benefica program offers, for independent pharmacies, special commercial conditions, business support actions, promotion and visibility actions, loyalty campaigns, online promotion campaigns on the www.farmeximonline.ro platform, access to the Benefica mobile application, planograms, promotion on the website www.farmaciiibenefica.ro dedicated to patients;
- in 2022 there were more than 500 pharmacies included (group pharmacies are not included in the Benefica program)

24. Loyalty programs have an extensive territorial coverage, being present in all regions of the country. A situation of the geographical coverage of the loyalty programs, at the county level, is presented in the graph below.

Figure 1. Geographical coverage of loyalty programs



25. The adherence of pharmacies to these loyalty programs does not represent concentrations but can strengthen the position of these pharmacies on the retail market as a result of the benefits obtained from enrollment in the program.

26. In September 2022, the Romanian Competition Council launched a sector inquiry into the retail market for pharmaceutical products for identifying the obstacles that can limit patients’ access to drug products. This inquiry will focus on the supply chain of drugs from their entry into the market up to the retail/pharmacy level, and also the relevant legislation in the field will be analyzed in order to identify regulations that may affect competition. By conducting this inquiry, the competition authority will carry out an analysis of the entire pharmaceutical retail market and will examine the changes in the market structure by

capturing all concentrations in terms of their effect on the structure of competition, regardless of whether or not these concentrations were subject to the authority's control.

27. Also, the private healthcare market has grown significantly over the last years, considering that the major players have a growth model that included not only organic development, but also acquisitions. Thus, a series of transactions mark this stage of consolidation. On the one hand, parts of these small, serial transactions were not subject to the notification provisions. On the other hand, commitments have been accepted in cases where concerns about the compatibility of the transaction with a normal competitive environment have been identified.

28. In 2017, an acquisition targeted a top 10 player, Polisano, which was acquired by the market leader, MedLife. MedLife Group has an important background regarding both organic and also acquisition growth (during 2009 – 2021 MedLife announced 32 acquisitions of medical companies). In 2022, MedLife Group has completed the acquisition of a 50% stake in Neolife Romania's oncology centers. Thus, MedLife Group consolidated its integrated diagnostic and oncological treatment services through the 4 Neolife medical centers in Bucharest (2), Iași and Brașov.

29. Also, during 2022, remedies were used to prevent the harm to the competitive process that may result as a consequence of two mergers on the private healthcare market. The two mergers that were authorised with conditions are:

- a takeover of Muntenia Medical Competences (Argeș) by Medlife on condition to cap the tariffs for MRI and CT imaging services that Medlife Group provided in Arges County, for a period of five years, with an annual indexation at most at the rate of inflation.
- a takeover by Diagnostic Rapid SA of Onco Card SRL and Onco Card Invest SRL, in the conditions of maintaining a certain level of tariffs, as well as of quality indicators, for a period of 5 years, at the level of Brasov County.

30. The growing trend of serial acquisitions can be observed also in the retail food industry. The number of undertakings operating on this market is not limited according to a demographic criterion as in the case of the pharmaceutical retail market. Modern networks open 300-400 stores annually and in Romania there are 4,000 hypermarkets, supermarkets, discount stores, modern proximity stores and cash & carry.

31. It has been observed that the number of traditional stores has decreased year by year⁶, especially due to the expansion of the proximity formats of the large networks. One of the most well-known initiatives regarding traditional trade is LaDoiPasi, a franchise developed by the German group Metro in 2012. These stores are owned by franchisees. This network has now reached more than 1,700 units across the country. Metro has 30 stores (cash & carry format) and develops through partners the LaDoiPași store network. Indirectly, Metro's business also grows as a result of the development of the LaDoiPasi store network, these independent stores being the customers of the German group.

32. Traditional trade is still present in all parts of the country, but its market share has declined in major cities as local and international networks have expanded. In rural areas, however, traditional trade is still the main sales channel, although the proximity formats of the large networks are also present in these areas.

⁶ Romania has 38.000 traditional stores almost twice as few as in 2013.