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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Serial Acquisitions and Industry Roll-ups – Note by Estonia

6 December 2023

This document reproduces a written contribution from Estonia 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.

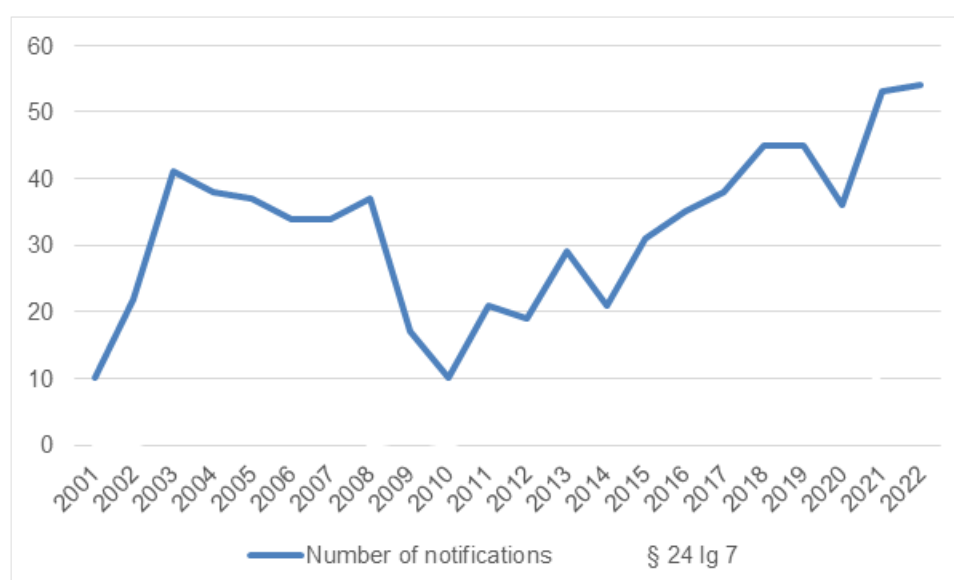
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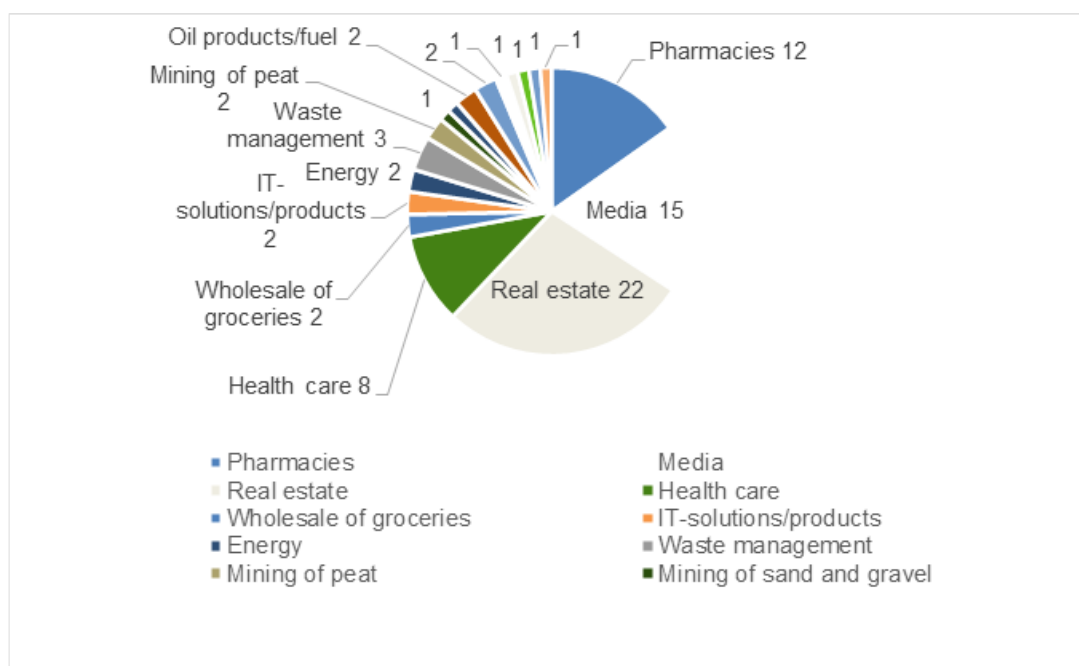
1. The Estonian Competition Authority has been able to review serial acquisitions since the introduction of merger control in 2001. There is a special provision in the Competition Act, the so-called two-year rule, which complements the general turnover thresholds.
2. According to paragraph 24(7) of the Competition Act, if, within the preceding two years one and the same undertaking or an undertaking belonging to the same group has acquired control of parts of an undertaking or undertakings which operate within one and the same sector of economy in Estonia, the turnover of the undertaking over which control is acquired shall include the turnover of the undertakings over which control has been acquired within the two years preceding concentration.
3. The aim of paragraph 24(7) is to control concentrations in economic sectors, where the aggregate turnover of undertakings is relatively small or there are large numbers of undertakings with small turnovers. By acquiring control of two or more undertakings, it would be possible to achieve a dominant position, which significantly restricts competition in an economic sector or a narrower product market.
4. The two-year rule laid down in paragraph 24(7) of the Competition Act is applicable to all economic sectors, there are no restrictions by law regarding the scope. Almost every year some mergers have been notified under paragraph 24(7).
5. During the period of 2001 – 2022, 79 mergers were notified under paragraph 24(7), which constitutes approximately 11 percent of all merger notifications (see Figure 1).

Figure 1. Number of merger notifications, including notifications under paragraph 24(7) in Estonia in 2001 – 2022.



6. Mergers notified under two-year rule cover a variety of economic sectors, dominated by real estate (22 notifications), media (15 notifications), pharmacies (12 notifications) and health care (8 notifications) (see Figure 2).

Figure 2. Division of notifications submitted under paragraph 24(7) by economic sector.



7. Recent years have seen notifications mainly in the real estate, media and health care sectors, previously in the pharmacies' sector mainly. Number of notifications in the pharmacies' sector dropped after an intervention decision by the Competition Authority in 2008 (described below) and stopped completely prior to the reform of the pharmacies' sector in 2020, which in principle prohibited vertical integration¹.

8. In general concentrations notified under paragraph 24(7) have been considered non-problematic. However, in 2008, a concentration that had been notified in 2007 under paragraph 24(7) of the Competition Act was prohibited. The case concerned the acquisition by the pharmacy chain Terve Pere Apteek OÜ (that belonged to the largest wholesaler of pharmaceuticals in Estonia – AS Magnum Medical) of a small pharmacy.

9. The concentration was prohibited due to its anticompetitive tendency, although the target's market share on the market for retail sale of pharmaceuticals was below 1%. The tendency meant that vertically integrated groups (one group owning both wholesale level and pharmacies) were taking control of pharmacies little by little. The result of such transactions was the strengthening of market power horizontally on the market for pharmacies' services and vertically on the wholesale level as pharmacies that belonged to the group would procure the majority of medicines from their own group.

10. This was the first time the Estonian Competition Authority prohibited a concentration. Without paragraph 24(7) and the two-year rule in the Competition Act, the concentration wouldn't have been notified. Already in 2007, the Estonian Competition Authority was considering prohibiting a concentration in the pharmacies' sector, but in this case the parties to the concentration withdrew the notification before the final decision was made.² Although the two-year rule has enabled the Competition Authority to review several

¹ According to the Medicinal Products Act, more than 50 per cent of the shares of the private legal person and the dominant influence must belong to a pharmacist

² Before 2006 it was not possible to prohibit concentrations between undertakings acting in the upstream and downstream markets, as only dominance test was used for the assessment of mergers.

transactions that would have otherwise escaped merger control, it is not a magic tool and has its shortcomings. For example, the merging parties may manipulate with turnovers and wisely leave longer periods between transactions so that the two-year period would pass. In such cases only the general turnover thresholds apply and in case they are not met, the merger is not subject to *ex ante* review by the Competition Authority.

11. The mentioned issue also arose a year after the above referred prohibition decision. The acquiring company asked whether it could complete the acquisition without notification and approval of the Competition Authority. At the time the acquiring company argued that the transaction wouldn't have to be notified anymore, i.e. the two-year period had passed, the turnover thresholds would not have been met and the legal foundation had changed. At that time the Competition Authority relied on the prohibition decision in force, but the situation would have been more unclear if the parties had withdrawn their initial notification.

12. Another issue to tackle has been the definition of economic sector (not specifically defined in any legal act). The merging parties have turned to the Competition Authority for clarification in this regard, for example whether classified ads for vehicles, real estate or timber belong to the same economic sector (classified ads) or different sectors and classified ads being only the distribution channel. The main tool the Competition Authority uses for defining the economic sector is the NACE classification of economic activities. So far there is no court practice addressing different aspects related to paragraph 24(7) of the Competition Act.

13. As a conclusion, one may say that despite the described issues, a two-year rule laid down in paragraph 24(7) of the Estonian Competition Act has been justified in the case of a small country. In the future, introduction of the call-in option would make merger control even more efficient in terms of targeting the potentially harmful transactions, including serial acquisitions.

In 2006 amendments of the Competition Act were introduced, according to which the Competition Authority prohibits when it significantly restricts competition in the goods market.