

Unclassified

English - Or. English

31 October 2023

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

**Serial Acquisitions and Industry Roll-ups – Note by Latvia**

6 December 2023

This document reproduces a written contribution from Latvia 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](http://www.oecd.org/competition/serial-acquisitions-and-industry-roll-ups.htm).

Antonio CAPOBIANCO  
Antonio.Capobianco@oecd.org, +(33-1) 45 24 98 08.

**JT03530410**

## Latvia

### 1. Introduction

1. The present paper analyses serial mergers that the Competition Council of Latvia (hereinafter referred to as the CC) observed during their analysis of merger decisions from 2005 to 2023. It covers the related legislation concerning the disclosure and evaluation of serial mergers' impact and concludes with findings and suggestions to improve the identification and better understand the impact of serial mergers on the competitive environment.

### 2. Legislation

2. Large, high-profile mergers get a lot of media coverage, but smaller, sequential mergers that consolidate industries can have a negative impact on customers and employees in those industries. In most cases, these mergers are not subject to legislative oversight. As a result, the customers experience a decrease in product variety among industry players, which results in inflated prices and standardized production.

3. Article 16, Part 3 of the Competition Law<sup>1</sup> (hereafter referred to as CL), stipulates that CC possesses the power to forbid mergers that lead to or strengthen a dominant position, or notably decrease competition within a particular market. Consequently, the CC has the power to address serial mergers if they significantly reduce the competitive environment in a particular market.

4. Until 2009, the CL provided that a merger had to be notified if the total turnover of the merging parties was LVL 25 million, without taking into account the turnover of each of the merging parties. Thus, even if the turnover of one of the merging parties was small, the merger was notifiable as long as the total turnover reached the threshold.

5. During the period from 2005 to 2008, it can be observed that CC assessed over 30 reports submitted in relation to the acquisitions of pharmacies. The decisions made were typically based on the acquiring entity's (pharmacy's) small market share, resulting in approvals being granted.

6. In 2009, new thresholds were established in CL to alleviate the excessive administrative burden on companies dealing with merger notifications. According to Article 15, Part 2 of CL requires that a merger be submitted *“if the aggregate turnover in Latvia of the participants in the merger in the last financial year has been not less than 30 million euros, and the turnover in Latvia of at least two participants in the merger in the last financial year has been not less than 1.5 million euros for each”*.

7. This approach is generally justified and reasonable across all sectors of the economy. It prevents excessive administrative burden on companies preparing and allows CC resources to be effectively utilized in reviewing significant merger transactions.

8. In addition, Part 2<sup>1</sup> has been added to the Article 15 of CL, whereby the CC has the right to require the merging parties to submit a report on a merger that does not fulfil the turnover requirements set out in the legislation within a period of 12 months after the

---

<sup>1</sup> <https://likumi.lv/ta/en/en/id/54890-competition-law>

completion of the transaction, if two criteria are met.: 1) the merger occurred in a specific market where the merging parties operate, and their combined market share in this specific market exceeds 40%, and 2) there are reasonable grounds to suspect that the merger may result in or strengthen a dominant position or significantly reduce competition in the specific market. Therefore, theoretically CC has the tools to control sub-threshold transactions, however, the CC requires ample and persuasive evidence to confirm these conditions are fulfilled. This demands exhaustive economic scrutiny, precise data gathering, and expert competition analysis to corroborate these suspicions.

### 3. Review of serial mergers cases

9. It is expected that the Latvian market is not extensive or diverse enough, and there are not enough sectors or industries with a considerable number of companies for serial mergers to take place. Nonetheless, by analyzing merger cases, we can see that this practice is apparent in the pharmacy retail market and the fuel retail market.

#### 3.1. Pharmacies case

10. In 2022, while reviewing the merger report for the AB City/Olainfarm<sup>2</sup> merger, the CC implemented remedies that prevented the acquisition of the Latvijas aptiekas network (hereinafter referred to as LA) and required its sale to a third party. The main reason for these remedies was that the AB City group's acquisition of the existing pharmacy network Mēness aptiekas (hereinafter referred to as MA), which had a 28% market share, would give the group an additional 9% market share in Latvia, thereby increasing the group's market power in Latvia and creating a dominant position in several local markets.

11. It should be noted, however, that the pharmacy market has not always been concentrated. Both pharmacy networks, MA and LA, acquired their market shares over a long period of time through serial mergers, buying pharmacies from individual pharmacists or pharmacist-owned companies.

12. After the collapse of the Soviet system and the regaining of independence, privatization took place in various sectors of the economy, including pharmaceuticals. As a result, more than 600 pharmacies were privatized. Initially, preference was given to pharmacists working in the pharmacies, but in any case, the regulations stipulated that the beneficiary had to be trained as a pharmacist.<sup>3</sup>

13. Later, with the entry of large pharmaceutical wholesalers into the market, they began to create their own pharmacy networks in Latvia by acquiring pharmacies owned by independent owners, thus ensuring vertically integrated services. All of this had a positive rationale, as it provided customers with a wider range of medicines at more affordable prices.

14. As the legislation at that time did not take into account the turnover of each of the merging parties, most acquisitions of pharmacies were notifiable and between 2005 and

---

<sup>2</sup> [https://lemumi.kp.gov.lv/files/documents/20220614\\_LEMUMS\\_ABCITY.Olainfarm.publiskoj\\_ama.versija..pdf](https://lemumi.kp.gov.lv/files/documents/20220614_LEMUMS_ABCITY.Olainfarm.publiskoj_ama.versija..pdf) (available in Latvian)

<sup>3</sup> Pharmaceutical Act Article 36(2) “A pharmacy may operate in the form of a capital company, if at least one of the following conditions is observed:1) not less than 50 per cent of capital shares (shares) of a capital company are owned by a pharmacist;2) at least half of the members of the board of a capital company (executive institution) is certified pharmacists.” Available at <https://likumi.lv/ta/en/en/id/43127-pharmaceutical-law>

2008 the CC received more than 30 merger notifications, which were usually cleared on the basis of the small market shares added.

15. The situation changed in 2009 when merger notification thresholds were changed. In addition to the overall turnover requirements, individual turnover thresholds of at least 1.5 million Latvian lats (currently EUR 1.5 million) were introduced for each merging party. As the turnover of each individual pharmacy did not exceed EUR 1.5 million, the CC has not received any merger notifications for the acquisition of individual pharmacies since 2009.

16. However, the market power of pharmacy networks continues to grow. Comparing the data published in 2017 by the Pharmaceutical Retail Market Surveillance with the currently available data from the State Agency for Medicines, it can be concluded that the market share of large network pharmacies has increased by 8% and there is an observable increase in the number of pharmacies in the five largest pharmacy networks.

Pharmacy network	2016	%	2023	%
Sentor Farm aptiekas	227	26.9%	249	29.5%
A aptiekas (Apotheka)	86	10.2%	111	13.2%
Benu aptiekas Latvija	62	7.4%	73	8.7%
Latvijas aptiekas	60	7.1%	69	8.2%
Euroaptieka	38	4.5%	40	4.7%
		56.1%		64.3%

17. Although the overall figures do not indicate that the pharmaceutical retail market in Latvia has reached a high level of concentration, it should be noted that this market is local in nature, defined geographically at the level of catchment areas or populated areas. In such localized markets, large players can achieve a dominant position.

18. The pricing of medicines at wholesale and retail level in Latvia is determined by Cabinet Regulation No. 803<sup>4</sup>, which sets the maximum price level depending on the manufacturer's price for Latvia. However, both wholesale and retail prices can vary according to volume and participation in joint marketing activities. As a result, network pharmacies enjoy advantages in drug pricing compared to individual pharmacies.

19. In order to control the competitive situation in the pharmaceutical retail and wholesale markets, as well as the financial accessibility of medicines, the CC has implemented several market surveillance initiatives:

- 2011, CC conducted market surveillance activities in the pharmaceutical distribution sector, focusing on the period between 2009 and 2010.<sup>5</sup>
- 2017, CC conducted surveillance of regional pharmaceutical retail markets, specifically focusing on determining market concentration during the period from 2011 to 2016;<sup>6</sup>
- 2019, CC investigated the formation of medication prices and potential constraints on competition that impact the financial accessibility of pharmaceuticals.<sup>7</sup>

<sup>4</sup> <https://likumi.lv/ta/en/en/id/120074-regulations-regarding-the-principles-for-the-determination-of-the-price-of-medicinal-products>

<sup>5</sup> <https://www.kp.gov.lv/lv/media/532/download?attachment> (available in Latvian)

<sup>6</sup> <https://www.kp.gov.lv/lv/media/403/download?attachment> (available in Latvian)

<sup>7</sup> <https://www.kp.gov.lv/lv/media/352/download?attachment> (available in Latvian)

20. It can be concluded that, as a result of the serial mergers in the pharmaceutical retail market, large pharmacy networks have gained significant influence. However, the situation is regularly monitored by the CC through market surveillance activities.

21. Such a concentration of pharmacies leads us to investigate whether a similar pattern can be observed in other industries or sectors. Although further research is needed, a seemingly similar situation is currently observed in the market for health centers (polyclinics), where an increasing share is held by health center acquisitions. These health centres are gaining market power by acquiring existing health centers and establishing new ones. Similarly to the pharmacy market, all acquisitions fall below the threshold and are not notified to the CC.

### 3.2. Fuel retail case

22. A similar situation to the pharmacy market can be observed in the fuel retail sector, where from 2005 to 2008 an average of 8 to 10 merger notifications were filed each year concerning the acquisition of one or more petrol stations (hereinafter referred to as PS). Since 2009, the total number of notifications has decreased, but as the turnover of PS is higher than that of pharmacies, the changes in the legislation have not affected their notification to the same extent as in the case of pharmacies.

23. However, the similarity between the two sectors remains that most merger clearances were based on small, acquirable market shares.

24. Over the last decade, CC has conducted two market surveillances in the fuel retail sector:

- 2014, CC conducted market surveillance in the fuel retail sector, specifically focusing on franchise agreements during the period from 2011 to 2013;<sup>8</sup>
- 2022, CC conducted market surveillance in the fuel retail sector to assess market dynamics and ensure fair competition practices.<sup>9</sup>

25. The 2022 market surveillance concluded, inter alia, that the acquisition of small individual petrol stations by petrol station chains and vertical integration in the fuel market are taking place, but that competition in the fuel market has increased with the entry of new competitors (the petrol station chain Gotika entered the market in 2013 and KOOL in 2016).

26. The retail fuel market is also characterized by a high degree of transparency. Firstly, the product (fuel) offered on the market is homogeneous or uniform, and secondly, fuel retailers' prices are publicly available, making it easy for competitors to monitor the fuel prices charged by others.

### 3.3. Private equity activities in Latvia and the Baltics

27. Despite the increasing number of companies owned by private equity funds worldwide, private equity activity in Latvia remains relatively low. One of the most active entities in recent years, both in Latvia and in the Baltic region, is BaltCap Private Equity

---

<sup>8</sup> <https://www.kp.gov.lv/lv/media/490/download?attachment> (available in Latvian)

<sup>9</sup> <https://www.kp.gov.lv/lv/media/10458/download?attachment> (available in Latvian)

Funds<sup>10</sup> (hereinafter referred to as BPEF). In the last five years, BPEF has filed 1-3 merger notifications, indicating acquisitions leading to either sole or joint decisive influence.

28. From the reports submitted and the information available on the BPEF website, it can be concluded that BPEF invests in companies with a value in the range of EUR 10 to 100 million, with typical investment amounts in the range of EUR 5 to 20 million. Consequently, these investments fall within the reporting requirements of the CC.

29. In addition, the investment portfolio shows that investments are not concentrated in any one sector. Instead, the focus is on innovative companies and buy-and-build opportunities, reflecting a diversified investment strategy.

#### 4. Conclusions and Recommendations

30. In conclusion, although serial mergers and consolidations of companies by private capital are not a current focus of CC, they are possible in certain sectors of the economy. The consequences of such actions could worsen the competitive situation within these sectors.

31. Several factors contribute to such serial mergers or increased activity of private capital. Firstly, the availability of cheap finance can encourage such activity, although this isn't widespread in Latvia at present due to the high cost of financial resources and low banking activity. Second, pension funds are increasingly investing significant capital in private enterprises. This trend may underlie the active operations of funds such as BaltCap in recent years. The third factor is related to the demographic change known as the "silver tsunami". Many owners of small businesses, individual pharmacies, health centers, rural petrol stations, privatized these businesses in the 1990s and invested over 20 years in their development. Now they want to enjoy the fruits of their labor. As a result, there are many small business owners in Latvia who are willing to sell their businesses.

32. In order to prevent or limit such situations, three main lines of action can be identified on the basis of the above analysis of the pharmacy and fuel markets.:

- monitoring of serial mergers
- focus on in-depth analysis of merger notifications
- improving the legislative and regulatory framework.

33. With regard to the monitoring of serial merger cases, it is important to note that, due to the small size of the Latvian market, market participants are quick to notice deteriorating competitive situations and in most cases they report them to the CC themselves. However, the CC should proactively monitor merger cases in the market and identify priority sectors that need attention. The CC has shown interest in digital monitoring tools or services, such as Orbis M&A, for searching and analyzing mergers and acquisitions, which could help to detect private equity and venture capital deals and rumors, but it's crucial to consider the small market size, which results in high costs for available tools and services.

34. When assessing merger notifications, it would be beneficial to focus not only on market shares but also on the long-term strategies of the merging parties. However, this means gathering evidence on the merging parties' business strategies, which is a challenge

---

<sup>10</sup> Information on the BPEF available <https://www.baltcap.com/our-strategy/buyout/>

given that such strategies are often confidential and companies are reluctant to disclose them, even or especially to regulators.

35. In terms of legislation, it would be worth considering a notification threshold based on the number of transactions, e.g. companies making acquisitions within a particular sector or market that would have a significant impact. Such mergers should be notified annually.