

# The acquisition of Tjellesen and Max Jenne by Celesio

Journal nr. 4/0120-0401-0003/JHK, KB, SCL

Rådsmødet den 21. juni 2006

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## 1. Summary

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1. The nature of this merger is the German pharmaceutical wholesale distributor Celesio's combined acquisition of two Danish pharmaceutical wholesale distributors Tjellesen and Max Jenne.
2. Upon a reasoned submission from the parties pursuant to Article 4(4) of the EC Merger Regulation, the European Commission has referred the contemplated merger to the Danish Competition Authority (DCA) for examination and decision in Denmark.
3. Celesio AG(Celesio) is a listed German company situated in Stuttgart. Celesio has three focus areas: wholesale of pharmaceuticals, supplier services to pharmaceutical manufacturers and the operation of pharmacies. Celesio is active in thirteen countries, but so far Celision has not had any activities on the Danish market.
4. K.V. Tjellesen A/S(Tjellesen) is a Danish company situated in Rødovre, Denmark. Tjellesen has two main focus areas: wholesale distribution of pharmaceuticals and supplier services for pharmaceutical companies. The majority of Tjellesen's activities are carried out in Denmark, and Tjellesen achieves [85-95] per cent of the company's turnover in the eastern part of Denmark (Zealand).
5. A/S Max Jenne Medicinalvarer En Gros, Aabenraa<sup>[1]</sup> (Max Jenne) is a Danish company situated in Aabenraa, Denmark. Max Jenne exclusively focuses on full-line wholesale of pharmaceuticals in Denmark and does not offer any supplier services. Max Jenne achieves approximately [90-100] per cent of the company's turnover in the western part of Denmark (Jutland and Funen).
6. According to the parties, the contemplated concentration should be seen as part of Celesio's overall strategy to pursue growth opportunities within the wholesale distribution of pharmaceuticals and supplier services to pharmaceutical manufacturers in Europe.
7. In this strategy, Scandinavia is considered an important market for Celesio. In particular, Denmark is seen as an attractive option to pursue said growth strategy. Consequently, the rationale behind a combined acquisition of Tjellesen and Max Jenne is to obtain a sufficient market share in order to be able to compete with Nomeco who is the biggest full-line wholesale distributor on the Danish market.
8. It is the DCA's opinion that the relevant product markets, affected by the contemplated merger, should be defined as the market for full-line wholesale distribution of pharmaceuticals and the market for supplier services.
9. The geographic scope of the market for full-line wholesale distribution of pharmaceuticals may – as the parties submit – be defined as regional (East and West Denmark). But the DCA finds it most likely that the geographic scope should be defined as national. The exact delimitation can, however, be left open, as it does not affect the assessment of the proposed concentration. With regard to the relevant product market for supplier services the relevant geographic market can be defined as Denmark.
10. The structure of the Danish market for wholesale distribution of pharmaceuticals to Danish pharmacies has for more than 10 years been concentrated on three full-line wholesalers, Nomeco, Tjellesen and Max Jenne, with Nomeco as the leading company with an almost constant market share of about [65-75] per cent.
11. During the same period no new players have tried to enter the Danish wholesale distribution market. Nor have other distribution forms, such as direct distribution (from manufacturer to pharmacy) and short-line wholesale distribution

(wholesalers offering a limited range of pharmaceuticals), had any significant effect on distribution of pharmaceuticals in Denmark.

12. Accordingly, Celicio's acquisition of the two small pharmaceutical wholesale distributors will lead to further concentration on an already concentrated market.

13. Post merger there will only be two players of any significant importance on the market, which under normal circumstances will give rise to concern.

14. But with a market share about [25-35] per cent the proposed merger cannot be deemed to create or strengthen a dominant position on the Danish market for wholesale distribution of pharmaceuticals.

15. Furthermore, the proposed merger will not decrease pharmacies' or manufacturers' options, and there is no reason to believe that there will be an increased likelihood of possible coordinated effects due to the reduction of major players from three to two.

16. On the contrary, the concentration of Tjellesen and Max Jenne, combined with the financial and managerial resources of Celesio, may lead to increased competition, since the new entity will have sufficient resources and incentive to compete effectively against Nomeco.

17. As far as the Danish market for supplier services is concerned, Tjellesen is the only party of the concentration that is active on this market, and there is nothing that indicates specific competition problems in that respect.

18. Consequently, the DCA finds that the contemplated merger does not create or strengthen a dominant position of the parties involved, by which effective competition will be significantly impeded, and that the merger does not give rise to other concerns.

## 2. Decision

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19. The Danish Competition Council approves the acquisition by Celesio AG of K.V. Tjellesen A/S, A/S Max Jenne Medicinalvarer En Gros and A/S Tødin, pursuant to Section 12 c (1), cf. Section 12 c (2), of the Danish Competition Act.

## 3. Background

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### 3.1 The parties

20. **Celesio AG** ("Celesio") is a listed German company situated in Stuttgart. Celesio has three focus areas: wholesale of pharmaceuticals, supplier services to pharmaceutical manufacturers and the operation of pharmacies.

21. Celesio is active in thirteen countries within wholesale distribution of pharmaceuticals. Its wholesale subsidiaries offer a full-line product range of pharmaceuticals, i.e. they supply their customers with all pharmaceutical products available on the respective markets.

22. Celesio's supplier services division is present in eight countries and aims to enable manufacturers to out-source non-core activities such as development, packaging, drug delivery, commercialisation and manufacturing services. Examples of specific service offerings are contract packaging, pre-wholesale (shipping from manufacturer's gate to the wholesaler's gate), inventory management, storage and invoicing.

23. Pharmacies are operated by Celesio in seven countries.

24. Celesio's turnover in 2005 within wholesale distribution of pharmaceuticals was EUR 16,946 million. The company had a total turnover in 2005 of EUR 20,491 million.

25. **K.V. Tjellesen A/S** ("Tjellesen") is a Danish company situated in Rødovre, Denmark. Tjellesen has two main focus areas: wholesale distribution of pharmaceuticals and supplier services for pharmaceutical companies.

26. The wholesale division operates as a full-line pharmaceutical wholesaler offering the entire range of products available in Denmark. However, the geographic scope of the company's wholesale operations is limited: Tjellesen achieves [85-95] per cent of its turnover in the Eastern part of Denmark (Zealand).

27. Tjellesen's supplier services division offers logistic services to pharmaceutical companies such as goods reception, release for sale, order handling, invoicing, reporting, storage, pick, pack and shipment services. The majority of the activities are carried out in Denmark although Tjellesen also have some small activities in the other Nordic countries and the Baltic countries.

28. In 2005 Tjellesen had a total turnover of DKK 3,402 million (approximately EUR 456.5 million).

29. **A/S Max Jenne Medicinalvarer En Gros, Aabenraa** ("Max Jenne") is a Danish company situated in Aabenraa, Denmark. Max Jenne exclusively focuses on full-line wholesale of pharmaceuticals in Denmark and does not offer any supplier services. Max Jenne achieves approximately [90-100] per cent of its turnover in the Western part of Denmark (Jutland and Funen).

30. Max Jenne's total turnover in 2004/2005 (for the period 1 July – 30 June) was DKK 1,177 million (approximately EUR 158.1 million).

31. **A/S Tødin** ("Tødin") is a Danish company situated in Aabenraa, Denmark. The company's shares are all owned by Tødin Holding. Tødin is a sister company to Max Jenne, as both companies' parent companies are ultimately owned by the same person. Tødin mainly focuses on wholesale of homoeopathic products to pharmacies in Denmark. The company also parallel imports pharmaceuticals from Germany to a minor extent.

32. In 2004, Tødin had a total turnover of DKK 14.1 million (approximately EUR 1.9 million).

## 4. Jurisdiction

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### 4.1 Turnover

33. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Celesio: EUR 20.49 billion, Tjellesen: EUR 456 million, Max Jenne: EUR 158.1 million, Tødin: EUR 1.9 million). Two have a Community-wide turnover in excess of EUR 250 million. Both Tjellesen and Max Jenne achieves more than two thirds of their aggregate Community-wide turnover in Denmark, but that is not the case for Celesio.

34. Accordingly, the notified transaction meets the turnover thresholds and has a Community dimension pursuant to Article 1(2) of the EC Merger Regulation<sup>[2]</sup>. The transaction also meets the turnover thresholds in Section 12 of the Danish Competition Act.<sup>[3]</sup>

### 4.2 Referral from the Commission

35. Upon a reasoned submission from the parties pursuant to Article 4(4) of the EC Merger Regulation, the European Commission referred the proposed transaction to the Danish Competition Authority (hereinafter: DCA) for examination and decision in Denmark. Pursuant to Section 15c of the Danish Competition Act, it has been agreed that the authority deals with the case in English.

## 5. The concentration

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### 5.1 Control

36. The nature of the concentration is Celesio's combined acquisition of Tjellesen and Max Jenne (including Tødin).

37. The acquisition of Tjellesen will be achieved by the purchase of all A-shares and 6.6 per cent of the B-shares, representing approximately 26.3 per cent of the issued nominal share capital and 74.7 per cent of the votes in the company. Subsequent to the signing of the agreement for acquisition of the A-shares and 6.6 per cent of the B-shares Celesio has made a conditional public offer for the acquisition of an additional 33 per cent of the B-shares in Tjellesen.

38. The acquisition of Max Jenne will be achieved by way of a share sale and purchase agreement under which Celesio will acquire 100 per cent of the shares in Max Jenne and Tødin, respectively.

39. The contemplated concentration concerns Celesio's combined acquisition of sole control of Tjellesen and Max Jenne. The two transactions are legally and economically fully interdependent, and the respective contracts provide that neither can take place in isolation. Therefore they are treated as one and the same concentration. The proposed concentration therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation and Section 12a of the Danish Competition Act, which in this respect mirrors the EC Merger Regulation.

## 6. The rationale behind the acquisitions

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40. According to the parties, the contemplated concentration should be seen as part of Celesio's overall strategy to pursue growth opportunities within the wholesale distribution of pharmaceuticals and supplier services to pharmaceutical manufacturers in Europe.

41. In this strategy, Scandinavia is considered an important market for Celesio. In particular, Denmark is seen as an attractive option to pursue said growth strategy. Consequently, the rationale behind a combined acquisition of Tjellesen and Max Jenne is to obtain a sufficient market share in order to be able to compete with Nomeco who is the biggest full-line wholesale distributor on the Danish market.

## 7. Relevant product markets

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42. The main sector concerned by the notified transaction is that of wholesale distribution of pharmaceuticals in which the activities of the parties overlap.

43. According to the parties, a separate market for wholesale distribution of parapharmaceuticals could also be defined. Both Tjellesen and Max Jenne are also active in the distribution of parapharmaceuticals.

44. In addition, there is a possible vertical relationship between the supplier services of Tjellesen and the wholesale distribution activities of Max Jenne, which could lead to one additional potentially affected market.

### 7.1 The market for wholesale distribution of pharmaceuticals

45. The parties to the concentration are all primarily active in wholesale distribution of pharmaceuticals.

46. Wholesale distribution of pharmaceuticals involves distribution of the entire range of pharmaceutical products, including doctor prescription only products, over the counter medicines (OTC)<sup>[4]</sup>, and other parapharmaceuticals including toiletries, health care, baby and beauty products from manufacturers/importers to pharmacies. Wholesale distribution of pharmaceuticals therefore forms part of the value chain in-between manufacturers/importers and pharmacies.

47. There are several routes for pharmaceutical products to reach retailers: (i) manufacturers supply direct; (ii) via full-line wholesale distributors (offering the whole range of pharmaceuticals) and (iii) via short-line wholesale distributors (offering a limited range of fast-moving pharmaceutical products).

48. The market for wholesale distribution of pharmaceuticals differs from other wholesale markets. First of all, the major part of the products distributed by the wholesalers can only be sold to the approximately 275 pharmacies in Denmark, as pharmacies have a monopoly on the sale of prescription-only and a long list of non-prescription medicines to consumers. Since the number of pharmacies and the sale of medicines to consumers are restricted by public regulation, there is no room for a growth in sale. Secondly, prices for pharmaceuticals are fixed and wholesale distributors can therefore only compete on the services provided and the discounts granted.

49. The parties to the concentration have indicated that the wholesale market for distribution of pharmaceuticals may be further sub-segmented into: full-line distribution, short-line distribution and direct distribution. The parties, however, also argue that an exact definition of the product markets for wholesale distribution of pharmaceuticals can be left open as this would not affect the competitive assessment of the proposed concentration.

50. Because wholesale distributors form the link between manufacturers/importers and retailers, it is necessary to analyse the demand-side substitutability from both the manufacturer/importer's point of view (upstream) and from the pharmacy's point of view (downstream). Demand-side substitution occurs if a minor increase in price makes a product/service less attractive to customers, who therefore decide to purchase less of it and more of substitute products.

51. It is also necessary to consider the potential for supply-side substitution, which occurs if a minor price increase prompts other companies to start supplying, at short notice, an effective substitute to the product/service in question. Supply-side substitution will usually come from companies with existing facilities, providing similar products/services and/or operating in adjacent areas.

#### 7.1.1 Upstream demand-side substitutability

52. On the upstream market manufacturers and importers of pharmaceutical products enter into distribution agreements with wholesale distributors regarding the distribution of their products to retailers. The manufacturers and importers are the wholesale distributors' customers.

53. When assessing demand-side substitutability it must be considered to what degree manufacturers and importers would switch to purchasing distribution services from other distributors if their current full-line distributor increased the price of its services.

54. Manufacturers may also decide to respond to a price increase by choosing to distribute their products themselves. However, direct distribution is an in-house activity and does not constitute a market or a part of a market, as in-house production is not offered to other manufacturers or importers. Direct distribution will therefore be considered as a separate competitive constraint.

55. As to short-line distribution the manufacturers have to take into consideration the risk that pharmacies may not be interested in taking delivery from several different distributors, and the pharmacies may thereby indirectly force the manufacturers to have their products distributed via their regular full-line distributor.

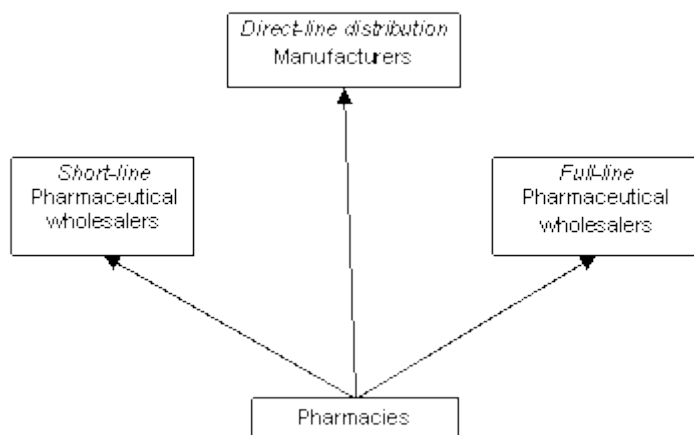
56. Furthermore, because of economies of scale full-line distributors are able to distribute at lower costs per unit, and in principle they should therefore be able to distribute the manufacturer's products at a lower price than short-line distributors.

57. These conclusions are also supported by the comments, which the DCA has received from manufacturers. The majority of manufacturers have stated that they only use the existing full-line wholesale distributors, and that they do not consider short-line distribution to be an eligible alternative.

#### 7.1.2 Downstream demand-side substitutability

58. On the downstream market, wholesale distributors deliver pharmaceutical products to pharmacies. Pharmacies are the wholesale distributors' primary customers on the down stream market.[5]

**Figure 1: Downstream demand-side substitutability**



59. Public regulation has an impact on the pharmacies' choice of supplier. According to the Danish Legislative Decree No. 657 of 28 July 1995, which sets out the requirements for the licensing of pharmacies and the operation thereof, pharmacies are required at any time to maintain an adequate stock of pharmaceuticals in order to meet the demand in the designated area of the pharmacy. Furthermore, pharmacies are required to procure all prescription only pharmaceuticals approved for marketing in Denmark as quickly as possible.

60. The legislative requirements have an impact on the downstream demand-side substitutability as pharmacies have to enter into agreement with a full-line wholesale distributor in order to take delivery of all pharmaceutical products.<sup>[6]</sup> Furthermore, it is essential for pharmacies to take delivery of all pharmaceutical products within a relatively short time period. Consequently, the legislative requirements thus entail that pharmacies mainly deal with full-line distributors.

61. Another element that has a significant impact on pharmacies' choice between full-line and short-line distributors is the discounts that pharmacies can receive in connection to their purchase of pharmaceuticals. According to the Danish Legislative Decree No. 793 of 10 September 2001, as amended by Legislative Decree No. 58 of 6 February 2002, concerning advertisement for pharmaceuticals, distributors of pharmaceuticals are only allowed to grant discounts that are counterbalanced by the distributor's cost savings (economically justified). This means that distributors can only grant discounts that reflect the lower cost they incur from the pharmacy's purchase. Consequently, pharmacies achieve higher discounts if they concentrate their purchases with one full-line distributor thereby lowering the distributor's cost.

62. Moreover, pharmacies are generally interested in taking delivery from as few distributors as possible, as this lowers the pharmacies' own costs.

63. The conclusions are supported by the pharmacies' comments. The pharmacies, which have answered the DCA's questions, have all replied that they consider rebates to be a very important factor when choosing a distributor. Other factors of importance are: speed of delivery, services, and security of delivery. Furthermore, 9 of the 10 pharmacies get between 97 and 100 per cent of their supplies from one full-line wholesale distributor.

64. All in all, pharmacies can choose to purchase some products from short-line distributors. But due to the Danish regulation and the pharmacies' wish to obtain the largest possible discounts, the pharmacies have in fact very limited incentives to switch from full-line distributors to short-line distributors.

#### 7.1.3 Supply-side substitutability

65. In theory, it is possible that other distributors have the capacity to switch from their current activities and – in the short-run as a response to a minor price increase – start up as a full-line distributor. For instance a short-line distributor may be able to enter into agreements, which enable the distributor to distribute the entire range of pharmaceuticals to pharmacies. However, in order to consider a competitor's possible response as supply-side substitution, such a response should not involve significant investment in premises, electronic data equipment, skills or marketing.

66. A switch from short-line distribution to full-line distribution would require significant sunk-cost investments especially in relation to the setting up of a distribution network, building adequate stock capacity, purchasing the necessary electronic data equipment and establishing an adequate level of services.

67. Moreover, new market players have to require a Danish authorisation according to Section 39 of the Danish Medicines Act from the Danish Medicines Agency before they are allowed to handle pharmaceutical products.<sup>[7]</sup> An authorisation is required for companies involved in manufacturing, importing, storage and distribution of pharmaceutical products. In order to receive an authorisation a wholesale distributor must act in accordance with Legislative Decree No. 1243 of 12 December 2005 concerning good distribution practice (GDP) for pharmaceuticals. This includes having suitable and adequate premises, facilities as well as equipment in order for the storage and distribution of pharmaceuticals to be correct. Furthermore, the company needs to have adequately qualified personnel.

68. Companies that solely act as an office providing for orders and issuing invoices for pharmaceutical products (invoicing) do not need to obtain an authorisation. However, if a company is responsible for handling complaints and withdrawals, the company will still need an authorisation. Companies pay an annual fee for the authorisation.

69. Other companies that might be able to change their activities and start up as full-line pharmaceutical distributors are wholesale distributors of veterinary medical products. Veterinary medical products can be split into products for commercial use (in the agriculture) and pet products. Products for commercial use are to a great extent sold to the farmers through cooperative purchase associations, whereas pet products are sold by pharmacies. Veterinary pet products only account for

approximately 5 per cent of the total sale in pharmacies, and the range of products is considerably smaller than the range of human pharmaceuticals. Veterinary distributors would therefore also face significant investments before being able to switch to full-line distribution of pharmaceuticals.

70. Consequently, the DCA finds that other distributors (short-line, veterinary or others) will not be able in the short run to switch from their current activities and start up as full-line distributors of pharmaceuticals without incurring significant investments.

71. As a response to a price increase, manufacturers may also choose to supply products directly to pharmacies. However, in-house production by manufacturers is not a potential supply substitution but should be considered as potential competition to full-line wholesale distribution.

72. According to the parties, direct distribution has shown an upward tendency in other European countries and is therefore expected to exert some competitive pressure on the Danish full-line distributors as well. To illustrate this tendency, the parties have presented the figures shown in table 1 below.

**Table 1: Percentage share – in value – of direct sales of pharmaceuticals from manufacturers to retailers**

	2002	2003	2004	2005
Germany	12.8	12.7	13.9	14.3
France	12.6	13.3	15.6	17.7
Italy	9	N/A	8.7	9.1
United Kingdom	2	2.2	2.8	3.1
Spain	2.3	N/A	2.2	3.5

Source: Parties to the concentration (IMS/GIRP)

73. There are, however, some inexplicable differences between the individual countries, which may be due to national factors having an effect on manufacturers' incentives to switch to direct sales.

74. As the background for the figures in table 1, as well as the countries selected to illustrate the tendencies, are subject to some uncertainty, which makes it difficult to conclude anything from the figures, the DCA has refrained from attaching great importance to these tendencies in its assessment of the proposed concentration.

75. The parties acknowledge, that such tendency has so far had no significant effect on distribution of pharmaceuticals in Denmark. This underlines the fact that manufacturers have only limited substitutes to the services delivered by the full-line wholesale distributors.

#### 7.1.4 Conclusion on the product market for wholesale distribution of pharmaceuticals

76. The parties argue that the relevant market for the assessment of the effects of the proposed concentration is the market for wholesale distribution of pharmaceuticals. The parties, however, submit that a precise definition of the relevant product market may be left open as this would not affect the competitive assessment of the proposed concentration.

77. With regard to the upstream demand-side substitutability, it is the DCA's opinion that only a small degree of substitutability exists between short-line distribution and full-line distribution. Even though manufacturers can choose to use short-line distributors, this only occurs to a very limited extent due to the economies of scale that full-line distributors benefit from, which enables them to offer distribution services at lower prices (lower gross profit margin). Consequently, from the manufacturers/importers' point of view full-line distributors cannot be substituted by short-line distributors. It is therefore the DCA's conclusion that short-line distribution cannot be considered as a substitute product/service.

78. Concerning the downstream demand-side substitutability it is the DCA's conclusion, that there only exists a very limited degree of substitution between short- and full-line wholesale services. Due to the consequences of the legal requirements imposed on the pharmacies and the limited possibilities distributors have for granting discounts, as well as the limited number of products being supplied via short-line distributors, short-line distribution cannot be regarded as a true substitute to full-line distribution.

79. In line with previous Commission decisions the DCA therefore concludes that the activities of full-line wholesale distributors can be distinguished from the activities of short-line distributors.<sup>[8]</sup> Consequently, the relevant product market for wholesale distribution of pharmaceuticals should be defined as “full-line wholesale distribution of pharmaceuticals”.

### 7.2 The market for wholesale distribution of parapharmaceuticals

80. The parties also submit that a separate product market for parapharmaceuticals<sup>[9]</sup> may exist, but that a precise market definition need not be examined further, as the parties’ market shares concerning wholesale distribution of parapharmaceuticals are very limited.

81. In previous cases the Commission has not defined a separate product market for the wholesale of parapharmaceuticals. The Commission has previously concluded that wholesale distribution of parapharmaceuticals is a part of the product market for full-line wholesale of pharmaceuticals.<sup>[10]</sup>

82. Whether a distinction has to be made between pharmaceutical wholesale and parapharmaceutical wholesale need not be decided for the purpose of the present case. In line with the Commission’s decisions the DCA will therefore consider wholesale distribution of parapharmaceuticals as part of the market for full-line wholesale distribution of pharmaceuticals.

83. Parapharmaceuticals are to a much wider extent than pharmaceuticals sold by supermarkets and drug stores, and wholesale distribution is carried out by many different wholesalers. Furthermore, the distribution of parapharmaceuticals is not regulated in the same way as pharmaceuticals, and for the most part the setting of prices takes place independent of public authorities. Distribution of parapharmaceuticals may therefore in the future have a separate and positive impact on competition between pharmaceutical wholesalers.

### 7.3 The market for supplier services

84. The parties to the concentration also submit that supplier services constitute a separate product market.

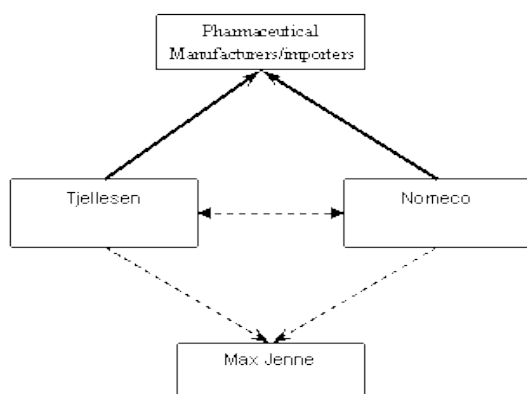
85. Supplier services comprise a variety of development, packaging, drug delivery, commercialisation and manufacturing services such as clinical supply, contract packaging, inventory management, storage, invoicing or sales.

86. Supplier services enable pharmaceutical manufacturers to outsource parts of their activities regarding their finished goods to wholesalers offering supplier services. Supplier services therefore form part of the distribution chain lying between the pharmaceutical manufacturers and the wholesale distributors.

87. The parties argue that supplier services also include pre-wholesale distribution in the form of sale and delivery of pharmaceuticals from manufacturers or importers to wholesalers and deliveries between wholesalers.

88. A supplier service agreement often includes an exclusive right for the wholesaler to distribute the products in question. In order to meet all pharmacies’ demand (i.e. also pharmacies that have chosen to buy from another wholesaler than the supplier service provider), it is normal practice that a supplier service agreement contains an obligation for the supplier service provider to deliver the products to other wholesalers as well.

**Figure 2: The market for supplier services**





Note: The full-drawn lines show the supplier services performed and the broken-lines show the distribution of products between the providers of supplier services and the other full-line wholesale distributors. (It ought to be mentioned that in fact there is one other provider of supplier services on the market, Biopharma, but Biopharma only accounts for about 1 per cent of the market and is therefore not included in the figure).

89. There are three main models for the supplier services offered by Tjellesen and other supplier service providers.

90. In the first model, the manufacturer retains ownership of the stock and remains responsible for the invoicing. The service provided therefore only includes stockpiling and deliveries of products to pharmacies and to other wholesalers for which the manufacturer pays a fee to the supplier service provider.

91. The second model is a variation of the first model, whereby the supplier service provider also becomes responsible for the invoicing. As in the first model the manufacturer retains ownership of the stock.

92. In the third model, the provider of supplier services takes ownership of the stock and the manufacturer pays the provider a service/financing fee in order to compensate the provider for the cost of storage and handling.

93. The supplier service providers typically undertake to deliver to all wholesalers in the market. This is also the case for the Danish market segment, where Tjellesen invoices Nomeco and Max Jenne for delivered products (where the second and third models apply) and Nomeco vice versa invoices Tjellesen and Max Jenne for deliveries from manufacturers that have entered into a supplier service agreement with Nomeco.

94. It is the DCA's opinion that deliveries between wholesalers are part of the product market for supplier services because wholesalers offering supplier services act on behalf of manufacturers and therefore – to some extent – on an up-stream market. This is especially true in regard to the type of supplier services in which the service provider takes ownership of the stock.

95. In regard to the parties of the concentration, Tjellesen is active on the market for supplier services and delivers products to Max Jenne on behalf of pharmaceutical manufacturers/importers.

96. The DCA does, however, not consider distribution from manufacturers as part of the product market for supplier services. As stated earlier supplier services consist of a number of services that a pharmaceutical manufacturer either need to perform in-house or outsource. Supplier services are therefore part of the chain between manufacturer and wholesaler. The provider of supplier services are the wholesale distributors who offer the services and the buyers are the pharmaceutical manufacturers who wish to outsource parts of their activities. It is the DCA's opinion that manufacturers cannot be seen as sellers of supplier services and that wholesalers cannot be seen as buyers of supplier services from manufacturers.

#### 7.3.1 Demand substitutability

97. Manufacturers/importers who wish to outsource part of their activities by purchasing supplier services can choose between Nomeco and Tjellesen who are the two big players on the market. According to the parties, the only other market player is the Company Biopharma, but so far this company has only succeeded in achieving an insignificant share (1.3 per cent) of the market.

98. According to the manufacturers who outsource certain activities to companies offering supplier services, the provider of supplier services is often chosen on the basis of the following criteria: Price, flexibility, level of services, number of customers, sufficient capacity to handle large product portfolios etc.

#### 7.3.2 Supply substitutability

99. In theory, it is possible that other companies have the capacity to switch over from their current activities and - in the short-run - start up as providers of supplier services. However, such an activity switch would require authorisation, significant investments in premises, equipment, skills and marketing, as well as an established and considerable connexion in order to fulfil the requirements of the manufacturers.

100. It can therefore be concluded that the possibility of supply substitutions does not constitute a competitive alternative to the companies present on the market.

#### 7.3.3 Conclusion on the product market for supplier services

101. The parties submit that supplier services constitute a separate product market but that the market does not constitute an affected market, since the market share of Tjellesen is below [20-30] per cent. The calculation of Tjellesen's market share will, however, only be about [20-30] per cent if distribution from manufacturers and parallel importers is included in the market definition.

102. The DCA agrees that a separate product market for supplier services can be defined. The DCA does, however, not agree that distribution from manufacturers is part of the market. If distribution from manufacturers and parallel importers are not included in the market definition Tjellesen's market share is above [20-30] per cent (about [30-40] per cent).

103. Consequently, the market for supplier services will be considered an affected market.

#### **7.4 Conclusion on the relevant product market(s)**

104. The parties submit that the relevant, affected market is the market for wholesale distribution of pharmaceuticals. The parties also argue that although a market for supplier services exists, it is not affected by the merger. Finally, the parties have argued that a separate market for wholesale distribution of parapharmaceuticals may exist.

105. It is the DCA's opinion that the relevant markets should be defined as the market for full-line wholesale distribution of pharmaceuticals and the market for supplier services. The question whether there exists a separate market for wholesale distribution of parapharmaceuticals can be left open, as it does not affect the assessment of the case, and the DCA will therefore, in line with the Commission, consider wholesale distribution of parapharmaceuticals as part of the market for full-line wholesale distribution of pharmaceuticals.

### **8. Relevant geographic market(s)**

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#### **8.1 Full-line wholesale distribution of pharmaceuticals**

106. The parties submit that for the purposes of assessing this concentration, the market for full-line wholesale distribution of pharmaceuticals is regional in scope and should be defined as East and West Denmark, respectively. The exact definition of the geographic market for wholesale distribution of pharmaceuticals can ultimately be left open.

107. According to the parties, the main reasons for the regional market definition are the emphasis placed by pharmacies on the frequency and speed of delivery, although transport costs also have an impact – considering that East and West Denmark is separated by the Great Belt.

108. In line herewith, the parties submit that Danish wholesalers operate as regional suppliers with infrastructures clearly aiming to serve a limited geographic area rather than the whole territory of Denmark. Tjellesen operates warehouse facilities in Rødovre covering Zealand while Max Jenne operates warehouse facilities in Aabenraa, Vejle and Aalborg covering Jutland and Funen. Only Nomeco achieves a national presence in Denmark as it maintains warehouse facilities in Copenhagen, Odense, Kolding, Aarhus and Aalborg thereby covering the whole territory of Denmark.

109. In relation to the high value of pharmaceutical products, transportation costs have usually been perceived as being relatively low, which suggests a broader geographical scope. Furthermore, Denmark is a relatively small country and transportation costs are therefore mainly related to the bridge toll paid for crossing the Great Belt.

110. On the other hand, the fact that Nomeco has warehouse facilities all over the country indicates that it is not a totally unimportant condition to be able to cover the market on a national basis.

111. As to the speed and frequency of delivery, pharmacies do not need to receive products within a few hours of ordering them and do not necessarily need to take delivery every day. This is emphasized by the fact that both Tjellesen and Max Jenne have activities outside their traditional focus areas. Tjellesen makes deliveries to a few pharmacies in Jutland and Funen and Max Jenne delivers products to a few pharmacies on Zealand as well as to a pharmacy on Bornholm. Pharmacies are therefore not restricted from choosing a wholesale distributor without a local branch office, but distributors are to some extent constrained by physical storage facilities.

#### **8.2 Supplier services**

112. The parties submit that the relevant geographic market for supplier services is national in scope. Likewise, the customers are large pharmaceutical manufacturers, which have a national presence.

113. The DCA agrees with the parties' definition of the relevant geographic market.

### **8.3 Conclusion on the relevant geographic market(s)**

114. The DCA is of the opinion that the geographic scope most likely can be defined as being national. The exact delimitation of the geographic scope of the market for full-line wholesale distribution of pharmaceuticals can, however, be left open, as it does not affect the assessment whether the markets is defined as national or regional.

115. The DCA will thus assess the effects of the concentration in Denmark, where the proposed transaction will have its primary effect.

116. With regard to the relevant product market for supplier services the relevant geographic market can be defined as Denmark.

## **9. Hearing**

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### **9.1 Manufacturers/importers**

117. The DCA has asked a number of manufacturers to comment on the concentration.

118. According to the answers from the manufacturers, the merger is considered to have both positive and negative consequences for the distribution of pharmaceuticals in Denmark.

119. On the one hand some manufacturers are sceptic about the increased market concentration.

120. On the other hand most manufacturers find it positive, that Celesio's acquisition of the two smaller pharmaceutical wholesale distributors will create a more equal competitor to Nomeco.

### **9.2 Pharmacies**

121. The DCA have asked the 15 largest pharmacies in Denmark to comment on the effect of the concentration on the market for full-line wholesale distribution of pharmaceuticals (10 have responded to the questions). The majority of pharmacies conclude that the concentration will lead to increased competition between the two remaining full-line wholesale distributors. A minority conclude that the concentration will not change the current competitive situation.

122. Furthermore, a number of pharmacies have noted that the concentration could lead to an increase in potential competition from short-line distributors.

### **9.3 Competitors (Nomeco)**

123. In the opinion of Nomeco there is no doubt that the merger will increase entry barriers to the market, as potential new competitors will in future have to take up competition against two very strong established players on the market. In that connection, Nomeco has pointed to the fact that the most obvious potential competitor, Celisio, will be eliminated as a consequence of the merger.

124. Accordingly, Nomeco finds that the merger is likely to strengthen a potential collective dominant position between Nomeco and Tjellesen/Max Jenne.

125. On the other hand Nomeco has expressed the view that there is already considerable competition on the Danish market for wholesale distribution of pharmaceuticals between Nomeco and Tjellesen/Max Jenne, and Nomeco expects that undiminished or even increased competition will continue when the two small players are merged with a major foreign company.

126. Accordingly, Nomeco finds that, in principle, the reduction from three market players to two, does not give rise to other competitive concerns than those already existing on the market.

## **10. Assessment**

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## 10.1 Wholesale distribution of pharmaceuticals

### 10.1.1 The present market structure and competitive conditions

#### 10.1.1.1 Downstream

127. For more than 10 years wholesale distribution of pharmaceuticals to Danish pharmacies has been concentrated on three full-line wholesalers, Nomeco, Tjellesen and Max Jenne, with Nomeco as the leading company with an almost constant market share of about [65-75] per cent.

128. During the same period no new players have seriously tried to enter the Danish wholesale distribution market. Nor have other distribution forms, such as direct distribution (from manufacturer to pharmacy) and short-line wholesale distribution, had any significant effect on distribution of pharmaceuticals in Denmark.

129. The Danish market for pharmaceuticals is a highly regulated market, and regulation plays an important role for the competitive conditions of all participants in the distribution chain, including the wholesalers.

130. The wholesalers' customers – the pharmacies – are required at all times to maintain an adequate stock of pharmaceuticals and to ensure prompt delivery of any pharmaceutical product approved for marketing in Denmark.

131. This means that wholesale distributors are also more or less required to offer a full range of pharmaceuticals in order to supply their customers. Thus the wholesale distributors offer the exact same range of pharmaceuticals and are not in a position to compete on a variety of products.

132. The retail prices for pharmacy-reserved pharmaceuticals are fixed by the Danish Medicines Agency and calculated on the basis of the pharmacy purchase price (= wholesaler's selling price), which is fixed by the manufacturer and notified to the Agency. So due to public regulation, the wholesalers are not in position to compete on prices either.

133. Consequently, the wholesalers' competitive means on the downstream market are confined to discounts, level of services and range of parapharmaceuticals.

134. As of 2000 the pharmacies were allowed to receive discounts that are counterbalanced by the suppliers' cost savings (discounts justified by cost savings) from their suppliers. Consequently, the pharmacies got an incentive to implement more rational purchase policies and to choose the supplier, who offered the best possibilities of obtaining discounts.

135. This has had a considerable effect. Until 2000 it was normal practice for the pharmacies to disperse their purchases between the three wholesalers. But after the rules were changed in 2000 most pharmacies have concentrated their purchases with one wholesaler only, and today about 175 of the about 275 pharmacies have chosen Nomeco as their main supplier. Only about 50 pharmacies have chosen either Tjellesen or Max Jenne as their main supplier, and the remaining 50 pharmacies still disperse their purchases between two or all three wholesalers.

136. The services offered by the pharmaceutical wholesalers on the downstream market are free emergency deliveries, electronic ordering and invoicing systems, customer advice, stock management, vendor managed inventory, space management, cash management etc. Until a few years ago there was no big difference between the services offered by the three wholesalers. But in line with increased demands for discounts, the level of services offered has also become increasingly important for wholesale distributors on this market.

137. Finally, the wholesalers attempt to attract customers by offering a broad range of parapharmaceuticals and customised services designed to assist the pharmacies in maximising their sales of these products.

#### 10.1.1.2 Upstream

138. On the upstream market the wholesalers compete on profit margins and logistic services.

139. The wholesalers' gross profit margin is typically negotiated on a yearly basis with the manufacturer or importer, and the margin essentially depends on the expected distribution costs (including packaging costs, handling costs, expected number of deliveries and the manufacturer's ability to deliver the products etc.). The wholesaler is typically obliged to purchase and maintain sufficient stocks of the pharmaceuticals in order to meet all orders, including short-term demands.

140. In principle, the more cost efficient the wholesaler is the lower gross profit margin can he offer the manufacturer. This means that post merger, the manufacturers will face a new player that can be expected to offer a competitive gross profit margin.

141. In addition some wholesale distributors (Nomeco and Tjellesen) offer further logistic and other services to manufacturers on the upstream market. These supplier service market are closely connected to the wholesale distribution of pharmaceuticals, but are found to constitute a separate product market (for further presentation and assessment of the market for supplier services, see paragraph 7.3 and paragraph 10.2).

#### 10.1.2 The parties' position on the market

142. So far, Celisio has not been active on the Danish market. The market shares of Tjellesen and Max Jenne in 2004 and 2005 are shown in the table below<sup>[11]</sup>:

**Table 2: Market shares on the Danish Market for wholesale distribution of pharmaceuticals**

	2004			2005		
	DK east	DK west	DK total	DK east	DK west	DK total
Nomeco	[60-70]	[75-85]	[65-75]	[65-75]	[75-85]	[70-80]
Tjellesen	[25-35]	[0-10]	[10-20]	[25-35]	[0-10]	[10-20]
Max Jenne	[0-10]	[15-25]	[5-15]	[0-10]	[15-25]	[5-15]
Tjellesen + Max Jenne	[30-40]	[15-25]	[25-35]	[25-35]	[15-25]	[20-30]

143. As mentioned earlier, the DCA finds it most likely that the geographical market is national. But to illustrate the fact that Tjellesen and Max Jenne have only to a very small extent been competitors on a national market because of their focus on either the eastern or western part of Denmark, respectively, these figures are included in the table.

144. Measured by a longer period of time, it is worth mentioning that there have been no significant changes or development in the market structure over the last 5-10 years. There has only been a slight trend that Nomeco bit by bit has strengthened the company's position at the expense of Tjellesen and Max Jenne. This may very well be due to the fact that neither Tjellesen nor Max Jenne has had the geographical coverage or the financial resources to expand and capture new markets and thereby acting as an efficient and powerful counterweight to Nomeco.

#### 10.1.3 Dominance

145. Irrespective of the relevant geographical market being defined as national or regional (East and West Denmark), neither Tjellesen nor Max Jenne has taken a dominant position. Furthermore, the shares of both companies have been slightly decreasing, and in 2005 their combined market share was only in the range [25-35] per cent in the eastern region of Denmark.

146. In the light of the market structure, especially the position through many years of the leading competitor, Nomeco, the merged entity is not likely to strengthen or create a dominant position on the wholesale distribution market.

147. Even though Celisio has a financial strength, which neither Tjellesen nor Max Jenne possesses, it does not imply that the merged entity – with a market share between [20-30] per cent on the total Danish market – will be able to prevent efficient competition on the market. On the contrary, a new and stronger player might be able to contribute to improving the efficiency of pharmaceutical distribution and to exert more competitive pressure on the market leader, Nomeco.

148. Consequently, there seems to be no risk that the merger will create or strengthen a dominant position as a result of which effective competition will be significantly impeded.

149. Where this is the case, a merger shall be approved unless it causes other considerable concerns.

#### 10.1.4 Concerns

150. Celisio's acquisition of the two small pharmaceutical wholesale distributors will lead to further concentration on an already concentrated market.

151. Post merger there will only be two players of any significant importance on the market, which under normal circumstances will give rise to concern.

152. But the reduction from three to two market players is unlikely to have a negative impact on the pharmacies' and manufacturers' possibilities of choice.

153. Since Tjellesen and Max Jenne have only focused on their respective geographical areas, and only to an insignificant degree been in direct competition vis-à-vis the customers, the concentration is not likely to lead to any appreciable decrease of customer choice.

154. As regards the manufacturers, they will have the possibility to choose between two equally cost efficient distributors with national coverage, where Nomeco has so far been the only distributor, which could fulfil such requirement.

155. Another concern on a highly concentrated market is the risk of coordinated effects.

156. In that connection it is worth mentioning that there is no risk of price coordination since public regulation prevents the wholesalers from fixing their own selling prices. So the question is if the proposed concentration can be considered to increase the likelihood of any possible coordination of the discounts granted to the pharmacies or of the gross profit margins offered to the manufacturers.

#### 10.1.4.1 The risk of coordinated discounts

157. There seems to be no immediate risk that Celesio and Nomeco will have an increased incentive to coordinate their discounts to the pharmacies.

158. The pharmaceutical wholesale distributors' access to grant discounts is subject to public regulation, which stipulates that pharmacies are only allowed to receive discounts that are counterbalanced by the suppliers' cost savings (discounts justified by cost savings).

159. Previous investigations of the Danish wholesale distributors showed no indications that the three wholesalers had coordinated the amount of discounts offered, and there seems to be no reason to suspect that the risk of coordination will increase as a consequence of the merger.

160. The fact that Nomeco's market share will be more than twice the size of Celesio's market share makes the risk of coordination unlikely, especially if – as expressed by the parties – Celesio's rationale for entering the market is to capture new business rather than just maintaining the already existing business.

161. Finally, on a rather concentrated retail market as the pharmacy market, there is probably no doubt that the pharmacies would immediately detect and jeopardise the results of such coordination.

#### 10.1.4.2 The risk of coordinated gross profit margins

162. So far, manufacturers have often negotiated the gross profit margin with Nomeco before approaching Tjellesen and Max Jenne with the effect that Tjellesen and Max Jenne were more or less compelled to accept the already negotiated margin.

163. Post merger the manufacturers will be able to negotiate with two equally strong wholesale distributors, which might give an incentive for Nomeco and Celesio to coordinate their offers to the manufacturers.

164. But as mentioned above, Celesio intends to capture new business, which can only be captured from Nomeco, and in that case there seems to be no reason to believe that Celesio would have any interest or incentive to coordinate the company's margins or other business conditions with Nomeco.

165. In that connection it is worth mentioning the link, which exists between wholesale distribution and supplier services. In order to gain supplier service agreements, the wholesale distributors could be willing to reduce the level of the gross profit charged for wholesale distribution (what is lost on the swings is gained on the roundabouts).

166. In addition, the manufacturers, which in worst case could chose direct distribution, would most probably find out and react against any tacit collusion between the two distributors.

#### 10.1.4.3 The risk of derived negative effects from vertical relations with pharmacies

167. For the time being, there are a little less than 200 B-shareholders in Tjellesen and 71 of these shareholders are pharmacies.

168. Tjellesen's B-shareholders represent approximately 78.8 per cent of the issued share capital, but since each A-share has a voting right of ten times that of the B-share, the B-shareholders only represent approximately 27.1 per cent of the votes. In connection with the takeover, Celesio acquires 100 per cent of the A-shares and 6.6 per cent of the B-shares and intends to buy at least an additional 33 per cent of the B-shares. This means that Celesio will hold more than half the share capital and about 83 per cent of the voting rights.

169. Some market players have from time to time pointed to this owner structure, where pharmacies have interests in a wholesale distributing company, and expressed concern, that it might disturb competition on the pharmaceutical market.

170. According to Section 3 (3) of the Pharmacy Act, pharmacists are not allowed to run or to be attached to wholesale distributors unless approved by the Danish Medicines Agency.

171. The Danish Medicines Agency will, however, normally not object to pharmacies' interests as B-shareholders, provided that it does not give the pharmacy a direct influence on the management and operation of the company, and provided that it cannot affect the pharmacy's neutrality as to the pharmaceuticals dispensed to the customers.

172. So far, the Danish Medicines Agency has found no such negative effects when pharmacies have applied for approval of their shareholder interests in Tjellesen.

173. With only about 27 per cent, which will probably decrease to about 17 per cent of the voting rights after the merger, the B-shareholders have no influence on the management and operation of the company.

174. But it cannot be excluded, of course, that a pharmacist who is also a shareholder will have a financial incentive to place his orders with the company.

175. However, even though 71 pharmacies own shares in Tjellesen, only [20-30] of these pharmacies have actually chosen Tjellesen as their main supplier, so there is no reason to claim that the ownership structure of Tjellesen, which has existed since 1986, has led to any significant disturbance of competition in either level of trade. Nor is there any reason to believe that the contemplated merger will increase the risk of negative effects in that respect.

176. In that connection it is also worth mentioning that a wholesale distributor's invitation to invest in his company is only one of several means, which are used by the wholesale distributors to attract customers, and which include an element of loyalty-creating financial incentive. Free "added value services" and "partnerships" have to an increased extent been focus areas on the market for wholesale distribution of pharmaceuticals during recent years. For instance "vendor managed inventory" (currently only offered by Nomeco) is a loyalty-creating added value service, which is offered to the pharmacies that enter into a partnership agreement, leaving all logistics concerning the pharmacy's purchase, stock management etc. to the wholesale distributor.

177. Consequently, the DCA finds no reason to impose obligations on the parties to buy out the pharmacy shareholders as a condition for approval of the merger.

#### 10.1.5 Potential competition

178. As mentioned there has been no significant development of the market structure during many years, where Nomeco, Tjellesen and Max Jenne have in principle been the Danish pharmacies' only sources of supply.

179. Other forms, such as direct distribution and short-line distribution of pharmaceuticals, have only to a very small extent entered the market as real alternatives to the established full-line wholesalers. This is primarily due to public regulation, which makes it difficult for others than full-line wholesalers to meet pharmacies' requirements, and to the pharmacies' economic interest in concentrating their purchases with one distributor.

180. Manufacturers are already in a position to choose direct deliveries to Danish pharmacies if they find it more cost efficient than outsourcing the distribution to a pharmaceutical wholesale distributor. But so far, direct distribution is more an exception than a rule on the Danish market.

181. This is also the case as regards short-line distribution. This is probably and foremost due to the fact, that short-line distributors cannot be sure to have constant and stable sales of their products. Each and every time manufacturers of substitutable products have notified a lower price, a short-line distributor will be unable to sell his products, because the pharmacies are under an obligation to hand out the least expensive pharmaceuticals, and besides, only the product with the lowest price obtains full reimbursement from the National Health Insurance. In addition, full-line wholesale distributors benefit from economies of scale, which makes it difficult for short-liners to establish.

182. As mentioned, the market for wholesale distribution of pharmaceuticals has for many years been characterised by limited competition between a relatively few number of participants. The extensive public regulation of the pharmaceutical sector has no doubt played an import role in that respect. Therefore, it cannot be excluded that implementation of a liberalised pharmaceutical sector, as the Danish Competition Council recommended to the Minister of the Interior and Health in pursuance of section 2 (5) of the Competition Act, may activate the right mechanisms to promote competition – also on the market for wholesale distribution of pharmaceuticals. However, the assessment of this merger cannot be based on such potentials, as the prospects of the recommended liberalisations are subject to great uncertainty.

183. It is worth mentioning, however, that the first step towards new distribution forms has been taken through the recently established company Euromedicin, which distributes medicines (that are not eligible for reimbursement) to end-users via the Internet from Dutch pharmacies.

#### 10.1.6 Conclusion

184. The proposed merger will not create or strengthen a dominant position on the Danish market for wholesale distribution of pharmaceuticals as a result of which effective competition will be significantly impeded.

185. Furthermore, the proposed merger will not decrease pharmacies' or manufacturers' options, and there is no reason to believe that there will be an increased likelihood of possible coordinated effects due to the reduction of major players from three to two.

186. On the contrary, the concentration of Tjellesen and Max Jenne combined with the financial and managerial resources of Celesio may lead to increased competition, since the new entity will have sufficient resources and incentive to compete effectively against Nomeco.

## 10.2 Supplier services

187. Tjellesen is the only party to the concentration active in the Danish market for supplier services. According to the parties the annual turnover on the market in 2005 was 662 million EUR<sup>121</sup>. Tjellesen has a market share of approximately [25-35] per cent.

**Table 3: Market shares on the market for supplier services 2005**

	<b>Market share in per cent</b>
Tjellesen	[25-35]
Nomeco	[65-75]
Biopharma	[0-3]
Total	100.0 per cent

Source: Information from the parties

188. Nomeco is the largest player on the market and Tjellesen's main competitor. In 2005 Nomeco's market share was approximately [65-75] per cent

189. The smallest player on the market is Biopharma with a market share in the range of [0-3] per cent.

#### 10.2.1 Concerns

190. As part of the services, which Tjellesen offers to manufacturers, includes distribution to Max Jenne, the effects of the vertical relation between the two companies need to be assessed.



191. After the concentration the merged entity will have a national coverage on the market for full-line wholesale distribution of pharmaceuticals. Consequently, the merged entity could, as part of their supplier services, offer manufacturers to distribute their products to all pharmacies and consequently stop the delivery of products to Nomeco.

192. The response from Nomeco would most likely be to stop deliveries to the merged entity, the result of which would be that Nomeco and the merged entity would no longer be full-line distributors.

193. Such a scenario is, however, unlikely to occur, especially because the pharmacies would oppose to such change. Given the current regulation and market structure, the pharmacies have a financial interest in concentrating their purchases with one wholesaler. Being only about 275 in number, the pharmacies are a firmly constructed organisation, and their opinion is very important on the pharmaceutical market. It is therefore most unlikely that the manufacturers and wholesale distributors will dare to impose other sources of supply on the pharmacies' without their consent.

194. But even if Nomeco's and Celesio's future competitive efforts to attract supplier service customers should result in exclusive agreements, it can hardly be seen to have a negative impact on the market for supplier services.

#### 10.2.2 Conclusion

195. It can therefore be concluded that the concentration will not lead to any competition problems arising from the vertical relation between Tjellesen and Max Jenne.

### 11. Final conclusion

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196. The DCA concludes that the contemplated merger does not create or strengthen a dominant position of the parties involved, by which effective competition will be significantly impeded, and that the merger does not give rise to other concerns.

197. Consequently, the merger shall be approved according to Section 12c (1), cf. Section 12c (2) of the Danish Competition Act.

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[1] Celesio's acquisition of Max Jenne includes a fully owned company, A/S Tødin, which mainly focuses on wholesale of homeopathic products.

[2] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24/1, 29.1.2004.

[3] DKK 3.8 billion corresponds to approximately EUR 500 million, and DKK 300 million to EUR 40 million.

[4] Pharmaceuticals that can be sold without a prescription and without a visit to a medical professional.

[5] Wholesale distributors also deliver OTC products to supermarkets and drug stores. However, such delivery only comprises an insignificant part of the wholesale distributor's turnover.

[6] In theory it might be possible for pharmacies to enter into agreement with each individual manufacturer or with an adequate number of short-line wholesalers and thereby take delivery of all pharmaceuticals. However, this scenario is likely to be less efficient for the pharmacies and is therefore also less likely to be an option in practice.

[7] The Danish Medicines Act no. 1180, 12 December 2005. The authorisation of pharmacies is covered by the aforementioned Legislative Decree 657 of 28 July 1995.

[8] See for instance Case M.1243. – Alliance UniChem/Safa Galencia, Case M.2432 – Angelini/Phoenix, and Case M.2573 – A&C/Grossfarma.

[9] Vitamins, dietary supplements, beauty and healthcare products, baby products etc.

[10] See Note 8 above.

[11] It should be mentioned that the figures do not include supplies from direct distributors and short-liners, since sales through these channels are insignificant.

[12] The market turnover is calculated on the basis of the price of the products distributed by the provider of supplier services which includes the fee paid by the manufacturer/importer.