# Pharmaceutical distribution sector: The Autorité clears the acquisition of OCP Répartition, a subsidiary of the McKesson Europe Group, by the Phoenix Group subject to commitments

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## The decision was adopted after a partial referral from the European Commission

The transaction was referred to the *Autorité* on 30 March 2022, after the European Commission adopted a decision to refer the examination of the effects in France of the acquisition of sole control of McKesson Europe, owner of OCP Répartition, by the German Phoenix Group (see press release of 31 March 2022).

## Parties to the transaction

The Phoenix and McKesson groups are primarily active in the pharmaceutical distribution sector and, more specifically, in pharmaceutical distribution as wholesale redistributors.

The Phoenix Group operates as an integrated healthcare provider in several European countries, including Germany and France. In France, Phoenix is mainly active as a wholesaler redistributor through 20 depots.

The McKesson Europe Group supplies pharmacies in 12 European countries with pharmaceuticals and other healthcare products. In France, McKesson operates mainly as a wholesaler redistributor through its local subsidiary OCP Répartition,

which has 39 depots throughout the country.

## The pharmaceutical distribution market

The *Autorité* had the opportunity to analyse the pharmaceutical distribution market in depth in the context of the adoption of Opinion 19-A-08 of 4 April 2019 on sectors of urban medicinal product distribution and private chemical pathology.

As regards the product market, the *Autorité's* investigation confirmed the existence of a specific market for pharmaceutical distribution, an activity that consists of a wholesaler redistributor purchasing medicinal products wholesale from pharmaceutical laboratories and then reselling them to pharmacies, which are responsible for supplying the end consumer.

The information gathered during the investigation made it possible to limit the pharmaceutical distribution market to deliveries made only by "*full-liners*" and exclude deliveries made directly by manufacturers, insofar as these alternative methods of supply do not make it possible to rapidly obtain the full variety of medicinal products that pharmacies need.

With regard to geographical delineation, the *Autorité* considered that the market had national as well as local characteristics, which justified conducting an analysis at both levels. To analyse the transaction at the local level, the *Autorité* considered it appropriate to rely on the actual footprints of the depots of the parties to the transaction.

## The Autorité ruled out any competition problems at the national level

To rule out any problems at the national level, the *Autorité* took into account the market share of the new entity, the legal and regulatory context that governs the margins charged by wholesalers and sets the prices of medicinal products, the

importance of the countervailing power of demand exercised by pharmacy groups, and the presence of several other operators likely to exert competitive pressure on the new entity.

## A risk of harm to competition detected in the Saint-Étienne area

Still taking these factors into account, the *Autorité* was able to rule out any risk of competition at the local level in 38 of the 39 areas in which the market share of the new entity exceeded 40%.

However, the *Autorité* considered that these factors did not make it possible to exclude the risk of the deterioration of commercial conditions for pharmacies located in the Saint-Étienne area. In this area, the transaction was likely to mitigate the competitive dynamics, given the position of the new entity after the transaction, the weak position of the competitors present and the absence of countervailing power on the part of the pharmacy groups.

## The Autorité accepts the commitments proposed by Phoenix

To remedy the identified risks, Phoenix has committed that the regional groups whose members are served by the OCP and Phoenix depots in the area will be able to terminate their contracts with the new entity without cost or penalty by 31 December 2022. It has also committed that after 1 January 2023, and for a period of five years, any contract linking these groups to the new entity will expressly provide that the groups may withdraw from the contractual relationship at any time without charge or penalty.  As a result of these measures, the competitors present in the area will always have the possibility of acquiring this clientele by proposing more attractive offers. For their part, the groups will retain the ability to break away from the new entity if it attempts to use its market power to degrade commercial conditions. The *Autorité* considered

that the behavioural remedies submitted by the notifying party were effective and proportionate for remedying the competition concerns raised by the transaction.

***Full text of the decision will soon be available on the Autorité's website***

## Contact(s)

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