

***Case No COMP/M.4229 -  
APHL / L&R / NETCARE  
/  
GENERAL  
HEALTHCARE GROUP***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 25/07/2006

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case COMP/M. 4229 – APHL / NETCARE / GENERAL HEALTHCARE GROUP  
Notification of 19 June 2006 pursuant to Article 4 of Council Regulation No 139/2004<sup>1</sup>**

## **I. INTRODUCTION**

1. The Commission received on 19 June 2006 a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (“Merger Regulation”) by which the private equity investment advisor Apax Partners Holdings Limited (“APHL”, UK) acquires, together with Network Healthcare Holdings Limited (“Netcare”, South Africa), joint control over the independent healthcare provider General Healthcare Group Limited and its affiliates (“GHG”, UK).
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the Common Market and the EEA Agreement.

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<sup>1</sup> OJ L 24, 29.01.04, p.1

## II. THE PARTIES

3. APHL is the parent company of a number of companies which provide investment management and investment advisory services to private equity funds, which invest in a wide range of industry sectors primarily in Europe. APHL controls, amongst others, two portfolio companies which are active in markets upstream of GHG: Mölnlycke Healthcare (“MHC”)<sup>2</sup> which manufactures surgical products, wound care products and bandages for the professional healthcare sector; Healthcare at Home (“HaH”) which provides nursing services and drug delivery services to hospitals and patients at home.
4. Netcare is a South African healthcare company, which is active in the health care sector in the EEA via GHG.
5. GHG is a joint venture which provides independent (private) health care services throughout the UK. It has two divisions: BMI Healthcare (“BMI”), which operates several acute independent (private) hospitals in the UK and Amicus Healthcare (“Amicus”), which provides outsourced healthcare services to the publicly funded UK National Health Service (“NHS”) under the Independent Sector Treatment Centre (“ISTC”) public procurement programme.

## III. THE OPERATION

6. The notified transaction consists of a change in the voting rights in the holding company Hold LLP, which is currently controlled by Netcare. Hold LLP owns all the rights in and has sole control over GHG.
7. The current transaction was preceded by an earlier transaction of 12 May 2006, by which Netcare, APHL and two other investors, London & Regional Properties Limited (“L&R”) and Brockton Capital LLP (“Brockton”), obtained all the rights in GHG<sup>3</sup>.

## IV. CONCENTRATION

8. GHG is currently solely controlled by Netcare. The notified modification of the current voting rights of Hold LLP will allow APHL to appoint [...] of the [...] directors in Hold LLP and to veto strategic decisions (including the budget, acquisitions and disposals, approval of financial statements, sale and lease-back arrangements) relating to GHG’s holding partnership. The other partners L&R and Brockton only have minority interests (i.e. without veto rights). That situation will not change as a result of the transaction.
9. Following the implementation of the notified concentration the situation of sole control over GHG (via Hold LLP), will thus change into a situation of joint control by APHL and Netcare, within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004.

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<sup>2</sup> Case M. 3816 Apax/Mölnlycke

<sup>3</sup> According to this transaction Netcare acquired a majority holding of partnership interests and strategic commercial veto rights (and therefore sole control) over GHG, whereas the other parent companies APHL, L&R and Brockton only acquired minority interests without controlling veto rights. This transaction was not notified to the Commission, as the undertakings concerned, i.e. Netcare and GHG, had a combined worldwide turnover of less than € 5 billion (Netcare € [...] billion, GHG € [...] billion) and Netcare had less than € 250 million EC turnover in 2005 (Netcare UK € [...] million).

## V. COMMUNITY DIMENSION

10. The combined aggregate worldwide turnover of the undertakings concerned is more than € 5 billion (APHL € [...] billion, Netcare € [...] billion<sup>4</sup>). The aggregate Community-wide turnover of each of the undertakings concerned is more than € 250 million (APHL € [...] billion, Netcare (including GHG) € [...] billion). Whilst Netcare achieved more than two-thirds of its Community-wide turnover in the UK, APHL did not achieve more than two-thirds of its Community-wide turnover in one Member State. The operation has therefore a Community dimension in the sense of Article 1(2) of the Merger Regulation.

## VI. RELEVANT MARKETS

### A. Relevant product markets

11. The notified transaction only results in a vertical overlap between the parties given that APHL has no activities at the level of hospitals and/or providers of medical services, i.e. the areas in which GHG is active. The small horizontal overlap which exists between Netcare and GHG resulted from the previous transaction which provided Netcare with sole control over GHG<sup>5</sup>.
12. The vertical overlap which results from the current transaction is linked to the activities of APHL's subsidiary MHC, which is active upstream as supplier of a wide variety of medical supplies to hospitals and providers of medical services downstream, such as GHG, which is active in these fields in the UK via its two business groups BMI and Amicus<sup>6</sup>.

#### **1. Vertical overlap: downstream markets**

##### ***1.1. Acute independent hospital services***

13. GHG is active via its BMI division as a provider of acute independent hospital services in the UK. According to the parties, which refer to a previous decision of the OFT,<sup>7</sup> the UK market for acute independent (private) hospital services can be differentiated from the publicly funded NHS. Whereas private healthcare is paid for by the patient, usually through insurance with a private medical insurer operating on a national basis, the NHS is funded through general taxation and is free to the patient at the point of service delivery. According to the parties acute independent hospitals also differentiate themselves from the public healthcare provided by the NHS in terms of the overall patient experience, including infection control, waiting lists, clinical outcomes and physical comfort. However, the market definition in this case can be left open, since in all alternative

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<sup>4</sup> All references to turnover and market shares in this document refer to the year 2005 unless indicated otherwise.

<sup>5</sup> The overlap concerned the ISTC activities of GHG and Netcare UK, i.e. the European subsidiary of Netcare, which merged with GHG as part of the previous transaction.

<sup>6</sup> Since the vertical relationship between APHL's subsidiary HAH and GHG does not result in vertically affected market this will not be further discussed.

<sup>7</sup> BUPA/Community Hospitals Group Plc, UK Competition Commission, December 2000.

definitions considered, effective competition is not significantly impeded in the EEA or any substantial part of that area.

### ***1.2. NHS procurement of services through the ISTC programme***

14. In addition to the medical services provided by the NHS itself, the NHS also procures medical services from the private sector. The ISTC programme is such a NHS procurement programme. In 2003 the UK government launched the first ISTC procurement phase to outsource certain elective surgery, followed by a second phase, which began in 2005 and which will be completed by the end of 2006. This second phase also includes diagnostic procedures. Via its Amicus division GHG provides a wide range of medical services to the NHS in the context of the ISTC programme.
15. The NHS also procures private medical services through on the spot purchases and certain other procurement programmes. The parties submit however, that ISTCs are sufficiently distinct from these on the spot purchases and programmes to fall into a separate product market. In this respect the parties refer to the fact that ISTC contracts are five year contracts, open to international tender and cover a large numbers of standard elective surgery or diagnostic procedures. These can be distinguished from other shorter term contracts or contracts for primary care.
16. The market investigation confirmed that the supply of medical services in the context of ISTC procurement programmes constitute a separate product market from the purchase of private medical services through other NHS procurement programmes. Around half of the respondents to the market investigation indicated that the market for the supply of medical services in the context of ISTC procurement programmes should be split in its two major components elective surgery and diagnostic procedures. However, the definition of the relevant product market can be left open in this case, since in all alternative definitions considered, effective competition is not significantly impeded in the EEA or any substantial part of that area.

## **2. Vertical overlap: upstream markets**

17. There is a vertical relationship between APHL's subsidiary MHC and GHG where it concerns the supply by MHC of medical products to the BMI and Amicus divisions of GHG on a number of product markets:

### ***2.1. Surgical products***

18. MHC is active in the manufacture and sale of surgical products which protect patients undergoing a surgical procedure and hospital personnel in the context of a sterile operation theatre.
19. In a previous decision the Commission defined that the market for surgical products is to be split into separate product markets for surgical textiles, surgical gloves, Custom Procedure Trays (CPTs<sup>8</sup>) and antiseptics<sup>9</sup>.

#### ***2.1.1. Surgical textiles***

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<sup>8</sup> The market for CPT's will not be further discussed as it does not concern a vertically affected market.

<sup>9</sup> Case No COMP/M.3816 - Apax/Mölnlycke

20. The Commission has made a distinction between different types of surgical textiles (i.e. drapes, gowns, caps, masks, swabs, scrub suits) and between single use and multiple use versions of these products<sup>10</sup>.
21. The Commission acknowledged that all these different types of surgical textile products<sup>11</sup> use similar raw materials (textile), are manufactured according to similar production processes, that suppliers often produce a wide range of surgical textile products which are sold to the same type of customers and are used for the same purpose of protecting patients and hospital personnel during surgical procedure. However, it also indicated that from a demand side perspective, these surgical textiles are not necessary substitutable and that each of these products may therefore constitute a separate product market. Ultimately, the Commission left the product market definition open.
22. As set out above, most of the surgical textiles exist as single use products and multiple use products. In view of the fact that raw materials and manufacturing processes differ considerably and that most suppliers only focus on single use or multiple use products, the Commission considered in previous decisions that single and multiple use surgical textile may constitute separate product markets. However, in the end it left the product market definition open<sup>12</sup>. The parties argue against a distinction between single use and multiple use surgical textiles, as they consider that both single and multiple use products compete with each other. This would apply in particular with respect to drapes, gowns and scrub suits.
23. The majority of the respondents to the Commission market investigation confirmed that the market for surgical textiles is to be split in separate product markets (i.e. drapes, gowns, caps, masks, swabs, scrub suits), each of which can be split in single use and multiple use versions of these products. However, for the purpose of this case the definition of the relevant product market can be left open, since in all alternative definitions considered, effective competition is not significantly impeded in the EEA or any substantial part of that area.

#### *2.1.2. Surgical gloves*

24. In previous decisions, the Commission defined a separate product market for surgical gloves which are used in the sterile environment of the operating theatre (and are all single use products). Such a market for surgical gloves is to be distinguished from other types of surgical products<sup>13</sup>. In relation to surgical gloves a further distinction has been considered between powdered, unpowdered and synthetic gloves, in view of the differences in demand and use as well as average selling prices<sup>14</sup>. However, the Commission has left it open whether these segments would constitute separate product markets.

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<sup>10</sup> Case M.3816 Apax/Mölnlycke.

<sup>11</sup> Leaving aside the distinction between single and multiple use which is set out in the following paragraph.

<sup>12</sup> Case M. 3816 - Apax/Mölnlycke

<sup>13</sup> Case M. 3816 Apax/Mölnlycke

<sup>14</sup> Case M. 3816 Apax/Mölnlycke

25. A majority of the respondents to the market investigation indicated that the market for surgical gloves should be split in separate markets for powdered, unpowdered and synthetic gloves, although a minority of the respondents to the Commission market investigation considered that unpowdered and synthetic gloves are interchangeable subject to clinical preference and allergy considerations. However, for the purpose of this case it can be left open if the market for surgical gloves is to be split in separate product markets, since in all alternative definitions considered, effective competition is not significantly impeded in the EEA or any substantial part of that area.

### *2.1.3. Antiseptics*

26. MHC also produces surgical and non-surgical antiseptics, which are used as skin cleansers for both medical staff and patients. The parties agree with the conclusion of the Commission in earlier decisions that antiseptics constitute a distinct product market from other surgical products.<sup>15</sup> This was confirmed by the Commission's market investigation.

### *2.2. Wound care products*

27. MHC is also involved in the manufacture and sale of wound care products. In previous Commission decisions<sup>16</sup> separate product markets were defined for i) traditional wound care products (e.g. surgical dressings, fixation products, swabs) and ii) advanced wound care products (which are designed to create a special healing environment). This distinction was confirmed by the market investigation.
28. According to previous findings of the Commission<sup>17</sup> the distinction between traditional and advanced wound care products is justified by the fact that they do not offer the same performance and are used for different purposes. Traditional wound care products are used for cleaning wounds and absorbing liquids, and, secured by fixation, could be used to cover wounds. Advanced wound care products are used for interacting and controlling certain aspects of the physical environment of the wound and have been developed to treat hard to heal wounds.
29. The Commission has previously considered that advanced wound care products can be further subdivided into i) moist wound care products, ii) active wound care products and iii) biologically active wound care products.
30. The Commission however only defined the product market for moist wound care products, whereas it left open whether active wound care products and biologically active wound care products would constitute separate product markets. The majority of the respondents to the Commission's market investigation confirmed that all three segments would constitute separate product markets, although some respondents considered that moist wound care and active wound care would be part of the same product market in view of demand side substitutability. Often one product can be replaced by another category whereas the choice in individual cases seems to depend more on the general therapy method used. However, for the purpose of this case it can be left open whether

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<sup>15</sup> Case M. 4007 Reckitt Benckiser/Boots Healthcare International; Case M. 3816 Apax/Mölnlycke

<sup>16</sup> Case M. 3816 Apax/Mölnlycke, Case JV 54 Smith & Nephew/Beiersdorf

<sup>17</sup> Case M. 3816 Apax/Mölnlycke

active wound care products and biologically active wound care products constitute separate product markets since, in all alternative definitions considered, effective competition is not significantly impeded in the EEA or any substantial part of that area.

31. Within the product market of moist wound care products a number of product families can be identified, i.e. hydrogels, hydrocolloids, alginates, foam dressings, films and contact layers. In addition, the parties identified a product family for scar care dressings. In previous decisions the Commission has left it open whether each of the moist wound care product families would constitute a separate product market. Although each type of moist wound care products has specific characteristics that make them either suitable or unsuitable for a specific wound care, a moderate degree of substitutability was found to exist. The parties submit that the different moist wound care products can be applied interchangeably depending on the type of wound and the stage of wound evolution and therefore constitute one single market.
32. The majority of the respondents to the Commission's market investigation confirmed that the different types of moist wound care products would constitute separate product markets however, for the purpose of this case this question can be left open, since in all alternative definitions considered, effective competition is not significantly impeded in the EEA or any substantial part of that area.

### ***2.3. Bandages (including dressings)***

33. MHC manufactures and sells different types of bandages, which in line with previous Commission decisions have been defined as separate product markets<sup>18</sup>: i) support products, ii) retention and fixation bandages (used to keep dry or wet bandages in place) and iii) orthopaedic soft goods (ready-to-use support bandages for support and fixation of the arm in shoulder injuries, and support and fixation of knee, ankle and elbow injuries). This distinction was supported by the market investigation.
34. In addition to these categories, the parties identify a category of dermatology products. These products are meant for direct application on the skin for conditions such as eczema as well as medicated paste bandages used in the treatment of different types of skin conditions. A majority of the respondents to the market investigation confirmed that this category of products constitutes a separate product market. However, for the purpose of this case the question of the most accurate market definition for dermatology products can be left open, since irrespective of possible product market definitions, effective competition is not significantly impeded in the EEA or any substantial part of that area.

### ***2.4. Phlebology***

35. Phlebology products deal with problems relating to venous and lymphatic systems. In previous decisions the Commission has considered that these products could constitute a separate product market. However it left the definition of the product market open<sup>19</sup>. According to the parties phlebology products constitute a subsegment of a market for support and compression products. The responses to the market investigation on this issue were mixed, as some respondents considered that these products are part of the

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<sup>18</sup> Case JV 54 Smith&Nephew / Beiersdorf

<sup>19</sup> Case JV 54 Smith&Nephew / Beiersdorf

broader market for support and compression products. However, for the purpose of this case the question of the most accurate market definition for phlebology products can be left open, since irrespective of possible product market definitions, effective competition is not significantly impeded in the EEA or any substantial part of that area.

### **3. Customer segmentation**

36. In previous cases the Commission considered that for many of the above product markets a distinction could be made between two types of customers, i.e. hospitals on the one hand and community users (i.e. wholesalers, prescribers and recommenders) on the other hand. Such a distinction would reflect the differences in the competitive conditions and in price between both customer groups<sup>20</sup>. This would however not apply to surgical products and all submarkets thereof which, by their nature, are essentially for use in hospitals. Ultimately, the Commission left it open whether this distinction between the types of customers should lead to separate markets.
37. The majority of the respondents to current the market investigation considered that a distinction between the two segments is justified. Amongst others, reference was made to differences in prices and product presentation (bigger product packages in case of sales to hospitals) and discount and price reduction systems which are applied in relation to community customers. For the purpose of this case this issue will be left open as well since in all alternative definitions considered, effective competition is not significantly impeded in the EEA or any substantial part of that area.

#### **B. Relevant geographic markets**

##### **1. Downstream markets**

###### ***1.1. Acute independent hospital services***

38. The parties submit that the geographic market for acute independent hospital services is national, because the conditions for supplying these services are broadly similar across the UK. In respect of the publicly funded provision of healthcare, the market cannot be defined more broadly than the UK since the NHS does not provide services outside the UK. A national delineation of the geographic market would according to the parties also follow from the fact that the wide distribution of private hospitals throughout the UK and the operation of medical service providers on a national level have resulted in prices being decided at a national level, rather than directly reflecting local market conditions. In its BUPA decision<sup>21</sup> the OFT held however that acute independent hospitals operate on a series of local markets within the UK. Most patients do not travel far for their treatment and consultants normally seek admission at acute independent hospitals that are not too far from the NHS Trust hospital where they are based.
39. However for the purpose of this case it can be left open what the relevant geographic market for acute independent hospital services is, since in all alternative definitions effective competition is not significantly impeded in the EEA or any substantial part of that area.

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<sup>20</sup> Case M. 3816 Apax/Mölnlycke

<sup>21</sup> BUPA/Community Hospitals Group Plc, UK Competition Commission, December 2000

## ***1.2. NHS procurement of services through the ISTC programme***

40. The parties submit that the relevant geographic market for the NHS procurement of services through the ISTC programme or any sub-market thereof is at least EEA-wide, considering the fact that it concerns procurement markets where internationally operating companies participate in the bidding process. The majority of the respondents to the market investigation consider these markets however to be national or even regional. Amongst others, reference is made to the disparity in quality of healthcare between the Member States, entry restrictions for healthcare professionals and the cost of healthcare provision within the EEA. Reference is also made to the fact that the ISTC tenders often specify a specific region within the UK within which the services have to be delivered. However, for the purpose of this case the question of the relevant geographic market can be left open, since irrespective of the geographic market definitions considered, effective competition is not significantly impeded in the EEA or any substantial part of that area.

## **2. Upstream Markets**

### ***2.1. Surgical products***

41. The parties agree with the conclusion of the Commission in previous cases<sup>22</sup> that the geographic market for all surgical products and possible sub-segments thereof are EEA-wide. Surgical products are regulated by European standards and price levels are similar across the EEA. There are no significant barriers to trade in surgical products within the EEA (except transportation costs in some occasions) whereas the main suppliers are active throughout the area. This was confirmed by the market investigation.
42. Only with respect to one category of surgical products, i.e. antiseptics, the Commission has defined the geographic market as national in scope<sup>23</sup>. A large majority of the respondents to the market investigation considered this market also to be EEA wide. However, for the purpose of this case, this question can be left open, since in all alternative geographic market definitions considered, effective competition is not significantly impeded in the EEA or any substantial part of that area.

### ***2.2 Wound care products***

43. The Commission has defined the market for traditional wound care products as national due to large discrepancies in the market shares of leading players between individual Member States, large price variations and customers' national sourcing and specifications<sup>24</sup>. This market definition was confirmed by the Commission's market investigation. The majority of the respondents to the market investigation indicated that the different segments of traditional wound care products would be part of national geographic markets.
44. With respect to advanced wound care products the Commission left open whether this market, including possible sub-segments thereof are national or EEA-wide<sup>25</sup>. On the one

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<sup>22</sup> Case M. 1075 Nordic Capital/Mölnlycke and Case M. 3816 Apax/Mölnlycke

<sup>23</sup> Case M. 4007 Reckitt Benckiser/Boots Healthcare international

<sup>24</sup> Case JV 54 Smith&Nephew / Beiersdorf

<sup>25</sup> Case M. 3816 Apax/Mölnlycke

hand, the regulatory framework for advanced wound care products is similar across the EEA and leading suppliers market the same products all over the EEA. On the other hand, sales patterns vary between countries depending on awareness and penetration of advanced wound care techniques and reimbursement schemes. The results of the market investigation on this point are mixed. The majority of the respondents indicated that the markets for advanced wound care products were still national. However, some of the respondents indicated that these markets are becoming more EEA-wide due to, inter alia, the use of pan European tenders, cross border trade and the increasing presence of pan European or regional buyer groups.

45. However, for the purpose of this case, it can be left open whether the markets for advanced wound care products are national or EEA wide, since in all alternative geographic market definitions considered, effective competition is not significantly impeded in the EEA or any substantial part of that area.

### ***2.3. Bandages (including dressings)***

46. In previous cases the Commission found that the geographic scope of the market for bandages and any submarkets thereof as national.<sup>26</sup> The parties agree with this definition, which was also confirmed by the market investigation. All respondents to the market investigation indicated that the different submarkets are part of national geographic markets.

### ***2.4. Phlebology***

47. In previous cases, the Commission considered that the geographic market for phlebology products was at least national, but left the definition open<sup>27</sup>. The parties do not oppose to this view. The market investigation provided mixed responses (national or EEA-wide) as to the scope of the geographic market. However, for the purpose of this case, it can be left open whether the market for phlebology products is national or EEA wide, since in all alternative geographic market definitions considered, effective competition is not significantly impeded in the EEA or any substantial part of that area.

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<sup>26</sup> Case JV 54 Smith&Nephew/Beiersdorf

<sup>27</sup> Case JV 54 Smith&Nephew/Beiersdorf

## VII. ASSESSMENT

48. The notified transaction results in a number of vertically affected markets for the sale of medical products to hospitals<sup>28</sup>. These vertically affected markets concern the relationship between APHL subsidiary MHC, as supplier of a wide range of medical products, and GHG's BMI and Amicus divisions, as purchaser of such products for use in the context of the medical services they provide.
49. The parties argue that the transaction will have little effect on the vertically affected markets in this case.
50. In relation to the upstream markets for the supply of medical products to hospitals, the parties argue that even if GHG were to decide to purchase all or most of its requirements for the medical products identified under the product market definition from MHC, this would have only a limited impact on MHC's competitors. On the UK market for private acute hospitals GHG has a market share of around [15-25]%. This implies that even if GHG would decide to solely take supplies from MHC, more than [65-75]% of the market for private acute hospitals could be served by MHC's competitors. If one were to include the demand from the UK public sector ("NHS") GHG would account for less than [0-10]% of the total UK demand for medical products<sup>29</sup>.
51. With respect to the downstream markets for the purchase by hospitals of the above identified medical products, the parties submit that a potentially exclusive or preferred supplier relationship between MHC and GHG will not jeopardise the ability of GHG's competitors on the downstream market to purchase the products they need and therefore to compete with GHG. Moreover, they argue that MHC would not have an incentive to provide its products on an exclusive basis to GHG, as GHG only represents [0-10]% of MHC's total UK sales. It would therefore run against MHC's commercial interests to refuse supplies to competitors of GHG.
52. In addition, the parties submit that the effects of any potential price discrimination by MHC between GHG and its competitors would have negligible effects considering the relative limited value of the products concerned, as, in the case of GHG, these products account for only [0-10]% of its total costs.
53. In addition to these general observations which apply to all of the vertically affected markets the following more specific observations can be added.
54. With respect to the vertically affected EEA markets for the supply of masks, and scrub suits to hospitals<sup>30</sup> and the UK markets for surgical dressings<sup>31</sup> and foam dressings<sup>32</sup> to

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<sup>28</sup> The market shares indicated below only concern sales to the hospital sector, since GHG is not active in the community segment and the vertical overlap only exists in relation to sales to hospitals. On markets where MHC sells to both hospitals and community customers, i.e. the markets for wound care, bandaging products and antiseptics, and where these sales result in affected markets these markets will be discussed and relevant markets shares will be indicated.

<sup>29</sup> GHG account for [15-25]% of the UK acute independent hospital market. According to Laing and Buisson (2005) the acute independent hospital market in the UK accounts for 5,3% of the total UK acute hospital market. Accordingly, GHG accounts for about [0-10]% of the UK acute hospital market.

<sup>30</sup> For these products there are hardly any sales to community customers.

hospitals MHC's market share does not exceed [25-35]%. On each of these markets MHC is facing competition from at least three to four other internationally operating competitors, which are active on several product markets.

55. In relation to the vertically affected EEA markets for the sales of drapes ([35-45]%) and gowns ([40-50]%) to hospitals the situation is similar.

<b>Drapes</b>	EEA market share single use %
MHC	[35-45] ([25-35] <sup>33</sup> )
Cardinal Health	[10-20]
Hartmann	[5-15]
3M	[5-15]
Kimberley Clark	[0-10]
Lohmann Rauscher	[0-10]

<b>Gowns</b>	EEA market share single use %
MHC	[40-50] ([15-25] <sup>34</sup> )
Cardinal Health	[10-20]
3M	[5-15]
Hartmann	[5-15]
Kimberley Clark	[5-15]

56. There are at least four strong international competitors active on each of these markets. Whereas GHG's demand for drapes accounts for [0-10]% of the total EEA hospital demand for drapes and about [0-10]% of the UK demand for drapes, GHG's demand for gowns accounts for only [0-10]% of total EEA hospital demand for gowns and about [0-10]% of the UK hospital demand for gowns. In addition, if one would take into account the reusable drapes and gowns, as both the parties and a fair number of respondents to the market investigation suggest, the parties' market shares would be reduced to [25-35]% for drapes and [15-25]% for gowns.

57. In relation to the EEA market for the sale of caps<sup>35</sup> to hospitals, MHC is facing competition from internationally operating companies such as EIF, Paul Hartmann and Lohmann Rauscher.

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<sup>31</sup> If one would include the sales by MHC to community users, it would have a UK market share of [35-45]%.

<sup>32</sup> If one would include the sales by MHC to community users, it would have a UK market share of [35-45]%.

<sup>33</sup> This would be the market share on the market for single and multiple use market.

<sup>34</sup> This would be the market share on the market for single and multiple use market.

<sup>35</sup> These products are essentially sold to hospitals and not to Community customers.

<b>Caps</b>	EEA market share single use %
MHC	[40-50]
EIF	[5-15]
Hartmann	[0-10]
Lohmann Rauscher	[0-10]

58. GHG's demand for caps represents about [0-10]% of the total EEA hospital demand for caps and about [0-10]% of UK hospital demand for caps. The value of these products is also limited. MHC sales of caps to GHG amounted to €[...] in 2005 which limits its potential effect on competition.
59. With respect to the vertically affected EEA markets for the sale of unpowdered and synthetical gloves<sup>36</sup> to hospitals MHC is facing competition from a number of strong competitors.

<b>Unpowdered surgical gloves</b>	EEA market share %
MHC	[45-55]
Ansell	[25-35]
Sempermed	[5-15]
Cardinal Health	[0-10]

<b>Synthetic surgical gloves</b>	EEA market share %
MHC	[40-50]
Ansell	[40-50]
Cardinal health	[0-10]
Sempermed	[0-10]

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<sup>36</sup> These products are essentially sold to hospitals and not to community customers.

60. Whereas GHG ‘s demand for unpowdered gloves accounts for about [0-10]% of total EEA hospital demand for unpowdered surgical gloves and [0-10]% of the UK hospital market, its demand for synthetical gloves on an EEA basis amounts to [0-10]% and to about [0-10]% of the UK hospital demand for such products. It should be noted that on the broader market of surgical gloves (which also includes powdered gloves) MHC has a lower EEA market share of [25-35]%.
61. On the UK market for the sale of antiseptics to hospitals, MHC [...] its main competitors market shares have increased.

<b>Antiseptics</b>	UK market share %
MHC	[55-65] ([35-55])
Ecolab Adams	[10-20]
Unknown <sup>37</sup>	[10-20]
Cardinal	[0-10]

62. GHG’s demand for antiseptics accounts for only [0-10]% of total UK hospital demand for antiseptics and represented revenues of € [...] of which [55-65]% i.e. € [...] was supplied by MHC in 2005. MHC’s relationship with GHG is based on [...] contracts of a non-exclusive nature.
63. With respect to vertically affected UK market for the sale of retention and fixation bandaging products to hospitals the situation is as follows.

<b>Retention and fixation bandaging products</b>	UK market share %
MHC	[55-65] ([55-65] <sup>38</sup> )
Shiloh	[5-15]
Sallis	[5-15]
Shermond	[0-10]
Activa Healthcare	[0-10]

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<sup>37</sup> These data stem from IMS concerning sales to the UK, the IMS table does not identify the name of this producer.

<sup>38</sup> If one would include the sales by MHC to community customers, it would have a market share of [55-65]%.

64. [...] GHG's demand for these products account for about [0-10]% of total UK hospital demand. Value wise MHC's sales to GHG for these products amounted to € [...] in 2005. The bulk of these products (around [65-75]%) is sold to community customers and only [20-30]% is sold to hospitals (i.e. where the vertical overlap exist). The relationship between MHC and GHG is based on a non-exclusive [...] contract.
65. On the vertically affected UK market for the sale of advanced wound care - moist – contact layer to hospitals MHC has a market share of around [40-50]%<sup>39</sup>.

Contact layers	UK market share %
MHC	[40-50]([40-50])
S&N	[15-25]
J&J	[10-20]
Urgo	[5-15]
Hartmann	[0-10]

66. The parties argue that the market situation for the individual moist wound care families cannot be assessed in isolation since the different product families are substitutes for each other. On the broader UK market for moist wound care products MHC has a market share of [10-20]%. GHG's demand for contact layers accounts for less than [0-10]% of the total UK hospital demand. In value it represented revenues of €[...] in 2005. In addition, around [60-70]% of these products are sold to community customers, whereas only [25-35]% is sold to hospitals.
67. On the UK market for the sales of advanced wound care – moist – scar care to hospitals MHC's market position is relatively strong<sup>40</sup>, while its only competitor is S&N. The parties submit however that scar care dressings also compete with scar care gels and other scar treatment products. If, as set out above in relation to contact layers, one would base oneself on the broader UK market for advanced moist wound care products MHC would have a market share of [10-20]%.

Scar care	UK market share %
MHC	[65-75] ([40-50])
S&N	[25-35]

68. Scar care dressings are relatively new (six years on the market) and the total sales of these products to UK hospitals amounted to € [...] in 2005. Sales by MHC to GHG for all advanced wound care products taken together amounted to €[...] in 2005. GHG's

<sup>39</sup> If one would include the sales by MHC to community users it would have a market share of [40-50]%.

<sup>40</sup> It should be noted however that if MHC's sales to community customers would be included this would result in a market share of [40-50]%.

demand for scar care dressings accounts for less than [0-10]% of the total UK hospital demand for these products. If one would not only look at sales to hospitals but would also include the market for sales to community users MHC would face two additional competitors, i.e. Valeant Pharma and Nagor. Only [5-15]<sup>2</sup>% of these products are sold to hospital customers.

69. It follows from the above that under the circumstances, it is unlikely that the transaction will significantly impede effective competition on the vertically affected upstream and/or downstream markets. Although some of MHC's competitors which responded to the Commission's market investigation were critical of the transaction, as it would provide MHC with privileged access to GHG, both MHC's competitors and its customers did not expect foreclosure issues to arise from the proposed transaction.

## **VIII. CONCLUSION**

70. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission

[signed]

Joaquin ALMUNIA  
Member of the Commission