

***Case M. 7818 –
McKesson / UDG
Healthcare
(Pharmaceutical
Wholesale and
Associated Businesses)***

Only the English text is available and authentic.

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

Article 9(3)

Date: 03.03.2016

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

EUROPEAN
COMMISSION

Brussels, 3.3.2016
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Public Version

COMMISSION DECISION

of 3.3.2016

**relating to Article 9 of Regulation (EC) No 139/2004
referring to case M. 7818 – McKesson / UDG Healthcare (Pharmaceutical Wholesale
and Associated Businesses)**

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COMMISSION DECISION

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**relating to Article 9 of Regulation (EC) No 139/2004
referring to case M.7818 – McKesson / UDG Healthcare (Pharmaceutical Wholesale and
Associated Businesses)**

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (the "TFEU")¹,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No. 139/2004 of 20.1.2004 on the control of concentrations between undertakings² (the "Merger Regulation"), and in particular Article 9(3) thereof,

Having regard to the notification made by McKesson Corporation on 14 January 2016, pursuant to article 4 of the Merger Regulation,

Having regard to the request of the United Kingdom of Great Britain and Northern Ireland's Competition and Markets Authority of 22.01.2016,

Whereas:

- (1) On 14 January 2016 the Commission received notification of a proposed concentration by which McKesson Deutschland GmbH & Co. KGaA, an entity ultimately owned by the McKesson Corporation ("McKesson", United States) acquires certain businesses ("the Target") from UDG Healthcare plc ("UDG", Ireland), by way of purchase of shares.
- (2) The United Kingdom of Great Britain and Northern Ireland's (UK's) Competition and Markets Authority ("CMA") received a copy of the notification on 14 January 2016.
- (3) By letter dated 22 January 2016, the United Kingdom of Great Britain and Northern Ireland requested the referral to the CMA of the proposed concentration with a view to assessing it under national competition law, pursuant to article 9(2)(a) of the Merger Regulation ("the Referral Request").

¹ OJ C115, 9.8.2008, P.47.

² OJ L 24, 29.1.2004, p.1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

1. THE PARTIES

- (4) **McKesson** operates in the distribution and delivery of pharmaceuticals and medical equipment; medical supply products; and the delivery of healthcare information technology to healthcare organisations.
- (5) McKesson acquired the sole control over Celesio AG ("Celesio") in February 2014. The wholesaling subsidiary of Celesio in the UK, AAH Pharmaceuticals Limited ("AAH"), supplies prescription-only medicines, pharmacy-only medicines and other medical products,³ while Lloyds Pharmacy Limited⁴ ("Lloyds"), also a subsidiary of Celesio, operates retail pharmacies in the UK and the Republic of Ireland ("ROI").
- (6) **UDG** is a provider of sales and marketing services, wholesaling, medical equipment, packaging and specialist healthcare delivery services.
- (7) **The Target** includes UDG's pharmaceutical wholesaling business in Ireland and the UK, comprising the United Drug Supply Chain Services business ("UDSCS") operating in ROI and the United Drug Sangers business ("UDS") operating in Northern Ireland ("NI"); TCP Group ("TCP"), a healthcare services provider in the ROI; and MASTA Business ("MASTA"), a travel healthcare business in the UK.

2. THE OPERATION AND THE CONCENTRATION

- (8) On 18 September 2015, the Parties entered into a Share Purchase Agreement, which provides for the sale and purchase of the entire issued share capital of the companies comprising the Target from the various sellers within UDG.
- (9) The operation therefore constitutes a concentration pursuant to Article 3(1)(a) of the Merger Regulation.

3. EU DIMENSION

- (10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (McKesson: EUR 141 207 million, the Target: EUR [...]).⁵ Each of them has a Union-wide turnover in excess of EUR 250 million (McKesson: EUR [...], the Target: EUR [...]), but neither of the undertakings concerned achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State.
- (11) The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

³ The excerpt "prescription-only medicines, pharmacy-only medicines and other medical products" is described at paragraph 14 of the Form CO as "Pharmaceuticals and other OTC products".

⁴ Mentioned as Lloyds Retail Pharmacy in the Form CO paragraph 2.

⁵ Turnover calculated in accordance with Article 5 of the Merger Regulation.

4. THE ARTICLE 9 REFERRAL REQUEST

- (12) By a letter dated 22 January 2016, the CMA, on behalf of the UK, requested the Transaction to be partially referred to CMA with a view to assessing the effects of the Transaction in the UK under national competition law, pursuant to Article 9(2)(a) of the Merger Regulation.
- (13) In a preliminary assessment, the CMA has identified the following markets in which the Transaction would threaten to significantly affect competition in the UK:
- (a) The wholesale supply of pharmaceutical and non-pharmaceutical products, specifically in NI;
 - (b) The wholesale supply of pharmaceutical and non-pharmaceutical products to retail pharmacies;
 - (c) The wholesale supply of travel and flu vaccinations;
 - (d) The provision of vaccines and travel healthcare services.
- (14) The CMA further submits that it would be the best placed authority to review the competition effects of the Transaction in the UK for all such markets, given the fact that potential competition effects are narrower than national [...]. In addition, given that the geographic scope of the affected markets may be narrower than national, the case may require investigative efforts at local level. Besides, the CMA is well-placed to assess the Transaction, as it has previously investigated and is currently investigating the markets at stake (for instance, the Commission has recently referred the acquisition by McKesson of Sainsbury's pharmacy business in the United Kingdom.⁶

5. RELEVANT MARKETS

5.1. PRODUCT MARKETS

5.1.1. Wholesale of pharmaceuticals in the UK

- (15) The Commission has commonly sub-divided the wholesale of pharmaceuticals on the basis of the following three categories:⁷

⁶ See case M.7721 – *Celesio / Sainsbury's UK Pharmacy Business*

⁷ See cases M.6044 – *Alliance Boots/Andrae-Noris Zahn*; M.6033 – *Johnson & Johnson/Crucell*; M.7323 – *Nordic Capital/GHD Verwaltung*; M.7526 – *G.L. Swarovski/Bilfinger/Proficare*; M.7494 – *Brocacef/Mediq Netherlands*.

- a. *Categories of wholesalers* (full-line wholesalers⁸ and short-line wholesalers);⁹
- b. *Categories of products* (depending on whether the medicine may be sold with prescription or over-the-counter;¹⁰ whether it is an originator, generic or parallel import medicine; and whether the medicine may be sold in retail pharmacies under the supervision of a pharmacist only, or also in other outlets such as supermarkets); and
- c. *Categories of customers* (retail pharmacies, dispensing doctors¹¹ and hospitals) due to different purchasing and delivery patterns.¹²
- (16) In previous decisions, the Commission¹³ and in particular the Irish Competition and Consumer Protection Commission ("CCPC")¹⁴ have also considered a separate market for pharmaceuticals pre-wholesale services (including 3PLs),¹⁵ ultimately leaving the market definition open.
- (17) According to the Parties, a number of full-line wholesalers still operate in the EEA but none are active in the UK or Ireland due to the existence of exclusive arrangements for branded pharmaceuticals. The Parties therefore refer to full-line wholesalers in these countries as "broad-line wholesalers".¹⁶
- (18) For the purpose of this decision, the exact product market definition with regard to the wholesale of pharmaceuticals can be ultimately left open as the Transaction warrants closer scrutiny irrespective of the precise product market definition.
- (19) The question whether the *wholesale of flu and travel vaccines* is part of the overall market of wholesale of pharmaceuticals or constitutes a distinct market can be also left open for the purpose of this decision, leaving the CMA to investigate the matter further.

⁸ A full-line wholesaler undertakes to supply the full complement of prescribable pharmaceuticals.

⁹ A short-line wholesaler does not carry the full complement of prescribable pharmaceuticals. It often concentrates on a range of high volume products and tends to provide a once daily (or less frequent) delivery service to its customers.

¹⁰ "OTC", that is without prescription.

¹¹ A dispensing doctor is licensed to dispense pharmaceuticals to patients who live in areas with few or no retail pharmacies.

¹² See cases M.7323 – *Nordic Capital/GHD Verwaltung*; M.7494: *Brocacef/Mediq Netherlands*, M.4301 *Alliance Boots/Cardinal Health*, ME/2134/05 OFT decision on *Boots plc of Alliance Unichem plc*.

¹³ See e.g. case M.6044 – *Alliance Boots/Andrae-Noris Zahn*.

¹⁴ See case M/12/027 – *Uniphar/CMR*.

¹⁵ A 3PL is a third party logistics supplier licensed to store and transport pharmaceuticals. Pre-wholesalers are 3PLs that receive bulk pallets of pharmaceuticals from manufacturers to a single warehouse site and then deliver smaller volumes to the regional warehouses of wholesalers and directly to large volume purchasers (such as some hospitals).

¹⁶ A broad-line wholesaler is a wholesaler that competes on a UK-wide basis for the supply of a broad range of products including proprietary pharmaceuticals subject to general, restricted or exclusive arrangements (either as agent or distributor, from a competition law perspective) and provide a twice daily weekday delivery service to any pharmaceutical dispensing facility.

5.1.2. *Retail pharmacies in the UK*

- (20) The Parties submit that, in the UK, the core business of a retail pharmacy is the dispensing of pharmaceuticals pursuant to prescriptions. The only other significant area of activity for most retail pharmacies is the sale of OTC medicines. Although most other retail pharmacies also sell Health and Beauty (non-pharmaceutical) products, this activity is marginal and ancillary to their dispensing business, and is subject to competition from a large number of other retailers and supermarkets. The Parties submit, therefore, that the relevant product market comprises the retail sale of prescription and OTC pharmaceuticals.
- (21) The Parties note that, in the UK, there are differences between the dispensing of prescriptions and the sale of OTC medicines, since the retailing of the latter is less tightly regulated and most can be sold through other retail outlets such as supermarkets.
- (22) The Parties submit that, in the UK, retail pharmacies provide a variety of other services: Medicine Use Review and New Medicine Service, smoking cessation aid, needle exchange, methadone provision and screening and consultation services, flu and travel vaccination services.
- (23) The Commission has previously indicated, without concluding on this point, that the provision of pharmacy services to hospitals presents distinct features from community retail pharmacies.¹⁷ It has also segmented the market by categories of products, in particular between prescription and OTC medicines (in a similar way than for the pharmaceutical wholesale market).¹⁸
- (24) For the purpose of this decision, the exact product market definition with regard to retail pharmacies can be ultimately left open as the Transaction warrants closer scrutiny irrespective of the precise product market definition.

5.1.3. *Provision of vaccines and travel healthcare services in the UK*

- (25) Flu vaccines can be provided to consumers either paid by the National Health Service, if the individual falls within a vulnerable group (e.g. elderly people, very young children, or patients with immunodeficiencies), or can be obtained privately. In the latter case, large businesses may for example, offer their staff the option to have a flu vaccine administered by a contract nurse who may come to their offices and inoculate staff.
- (26) In terms of travel vaccines, any individual intending to travel abroad may seek advice and the necessary vaccines from their physician (typically this is their preferred choice), a hospital travel clinic, or they may visit a retail pharmacy that offers those services. Alternatively there are private travel clinics located on the high street or in airports where advice and vaccines can be obtained.

¹⁷ See case M.7721 – *Celesio/Sainsbury's UK pharmacy business*.

¹⁸ See case M.7494 – *Brocacef/Mediq Netherlands*.

- (27) Only doctors, nurses and licensed pharmacists are able to advise on and administer flu or travel vaccines. While not all retail pharmacies provide flu and travel vaccinations, a significant number of them will offer these services.
- (28) The Parties submit that the relevant market consists of all flu and travel health providers in the UK.
- (29) However, the Parties have not been in a position to provide reliable data concerning the products distributed at the wholesale level by MASTA since “*IMS does not provide separate data on flu and travel vaccines but includes the data within its figure for all Wholesaling*”.¹⁹ This may suggest that the wholesale supply of flu and travel vaccines is a part of the wholesaling of pharmaceuticals which the parties consider “should be viewed as a national market”.²⁰
- (30) For the purpose of this decision, the exact product market definition with regard to the provision of vaccines and travel healthcare services can be ultimately left open as the Transaction warrants closer scrutiny irrespective of the precise product market definition.

5.2. GEOGRAPHIC MARKETS

5.2.1. Wholesale of pharmaceuticals in the UK

- (31) The Parties submit that for pre-wholesaling the relevant geographic market is at least national.
- (32) In terms of the wholesaling of branded pharmaceuticals and other pharmaceuticals, they generally submit that the relevant geographic market is UK wide, but recognise that there are also some regional aspects (in particular in NI).
- (33) In terms of short-line wholesalers and 3PLs, the Parties submit that the relevant geographic market is at least national, if not wider.
- (34) In previous decisions, the Commission consistently considered that pharmaceutical wholesaling is either national or regional (sub-national) in scope, due to the emphasis placed by customers on the frequency and speed of delivery of medical products.²¹
- (35) For the purpose of this decision, the exact geographic market definition with regard to the wholesale of pharmaceuticals can be ultimately left open as the Transaction warrants closer scrutiny irrespective of the precise product market definition.

5.2.2. Provision of vaccines and travel healthcare services in the UK

- (36) The Parties consider that the relevant markets are likely to be local rather than national, and are likely to follow similar catchment radii to that of a retail pharmacies. However, the parties also note that flu and travel vaccinations tend to be

¹⁹ See paragraph 272 of the Form CO.

²⁰ See paragraph 228 of the Form CO.

²¹ See cases M.7721 – *Celesio/Sainsbury's UK pharmacy business*; M.7323 – *Nordic Capital/GHD Verwaltung*; M.7494 – *Brocacef/Mediq Netherlands*.

isolated requirements (unlike repeat prescriptions), and customers are likely to be prepared to travel further to obtain vaccination and related advice.

- (37) For the purpose of this decision, the exact geographic market definition with regard to the provision of vaccines and travel healthcare services can be ultimately left open as the Transaction warrants closer scrutiny irrespective of the precise product market definition.

5.2.3. *Retail pharmacies in the UK*

- (38) The Parties submit that pharmacies in the UK are subject to specific regulatory and licensing requirements, and market entry and the licensing of retail pharmacies is strictly controlled. England, Scotland, NI and Wales each have their own regulatory controls.

- (39) The UK competition authorities have previously noted that from the supply side there is a national dimension to competition in retail pharmacy. In particular, the Office of Fair Trading ("OFT") considered the existence of national chains and the fact that many pricing decisions are taken on a national basis and that such chains engage in national promotional and advertising campaigns. Regulation is broadly uniform throughout the UK, including NI. In addition, the same categories of products are dispensed and sold to consumers by retail pharmacies throughout the UK. However, from a demand side, retail pharmacy markets were considered fundamentally local in nature, typically based on a radius around each store location.²²

- (40) The Commission considered that the relevant market is national (from a supply side view) or local (from a demand side view).²³ The national dimension of the market derives from the existence of national chains of pharmacies, national advertising and promoting campaigns as well as from the fact that pricing decisions are usually taken on a national level. Most importantly, the regulatory framework regarding the retail sale of pharmaceutical products has a national dimension. However, from the demand side, retail pharmacy markets were considered as fundamentally local in nature, e.g. limited to a certain radius around each pharmacy.²⁴

- (41) For the purpose of this decision, the exact geographic market definition with regard to retail pharmacies can be ultimately left open as the Transaction warrants closer scrutiny irrespective of the precise product market definition.

²² See cases M.3990 - *Alliance Unichem/Boots*, ME/2134/05 - *Alliance Unichem/Boots* (OFT decision); M.7721- *Celesio/Sainsbury's UK pharmacy business*.

²³ See cases M.7721 – *Celesio/Sainsbury's UK pharmacy business*; M.7494 – *Brocacef/Mediq Netherlands*.

²⁴ See cases M.3990 - *Alliance Unichem/Boots*, M.7721- *Celesio/Sainsbury's UK pharmacy business*.

6. COMPETITION ASSESSMENT

6.1.1. Wholesale of pharmaceuticals in the UK

- (42) The Parties' activities overlap in relation to the wholesale supply of pharmaceuticals, General Sales List medicines²⁵ and Health and Beauty products,²⁶ specifically in NI. Affected markets arise at national level and at a narrower level comprising NI only, both for the overall market and segmenting by category of pharmaceutical product or by category of wholesalers.
- (43) The Transaction would give rise to affected markets, on a number of which it results in significant combined market shares and/or increments for certain plausible product and geographic market definitions, examples of which are highlighted (twelve months ending July 2015):

Wholesale supply (value)		McKesson ²⁷	Target ²⁸	Combined
UK	All pharmaceuticals	[20-30]%	[0-5]%	[20-30]%
	Broad-line wholesalers	[30-40]%	[0-5]%	[40-50]%
NI	All pharmaceuticals	[10-20]%	[40-50]%	[60-70]%
	Broad-line wholesalers	[20-30]%	[70-80]%	[90-100]%
Wholesale supply (volume)				
UK	All pharmaceuticals	[30-40]%	[0-5]%	[30-40]%
	Broad-line wholesalers	[30-40]%	[0-5]%	[30-40]%
NI	All pharmaceuticals	[20-30]%	[40-50]%	[60-70]%
	Broad-line wholesalers	[20-30]%	[60-70]%	[90-100]%

Source: Parties' estimates.

- (44) Regarding the wholesale supply in NI, more specifically horizontal unilateral effects, on a preliminary basis, the CMA²⁹ considers that the Transaction will result in the

²⁵ The General Sales List is a list of pharmaceuticals which may be sold under the Medicines Act 1968 in outlets other than retail pharmacies (e.g. supermarkets and newsagents etc.).

²⁶ Health and Beauty Products are sold by retail pharmacies that are also sold in other retail outlets such as supermarkets, convenience stores and specialist stores. These are non-pharmaceutical products that might be sold as part of a retail offering in a retail pharmacy and include products such as toiletries (e.g. dental hygiene products, deodorant, nappies, soap and shampoo) and other consumer goods (e.g. perfume and cosmetics).

²⁷ Conservative market shares including McKesson's broad-line wholesaler AAH and short-line wholesaler Trident.

²⁸ Conservative market shares including the Target's broad-line wholesaler UDS and the wholesale activities performed by UDS as a sub-contracted agent (wholesaler) of [...] in NI.

²⁹ See paragraphs 47 to 50 of the Referral Request.

loss of an independent regional broad-line wholesaler,³⁰ UDS. In the Alliance Boots / Cardinal Health merger,³¹ the Commission cited AAH and Phoenix as major competitors to Alliance Boots in the UK market for the wholesaling of pharmaceuticals. However, Phoenix has only a [0-5]% market share in NI. The other wholesalers in NI are regional broad-line wholesalers and short-line wholesalers which, contrary to UK broad-line wholesalers, do not have any exclusive arrangements for branded pharmaceuticals.³² Additionally, they usually do not provide the same frequency of delivery services.³³ Therefore they may not be in a position to exercise sufficient competitive constraints on the Parties.

- (45) According to the Parties only the three UK broad-line wholesalers are, and will be, in a position to bid for the exclusive supply arrangements for branded pharmaceuticals. For these reasons, the CMA is concerned that UDS is an important competitive force in NI which will be lost as a result of the Transaction and there is therefore a real risk of it resulting in a significant impediment to effective competition in the UK.
- (46) Based on this preliminary analysis, the Commission considers that, the Transaction would significantly affect competition in markets within the UK that present all the characteristics of distinct markets.
- (47) Concerning the co-ordinated effects, the CMA considers on a preliminary basis that a reduction in the number of broad-line wholesalers in NI may increase the likelihood of co-ordinated behaviour between the remaining broad-line wholesalers, since co-ordination may become easier and more profitable.

6.1.2. *Wholesale supply of flu and travel vaccines in the UK*

- (48) Both Parties (the Target through its subsidiary MASTA) supply wholesale flu and travel vaccines.
- (49) According to the Parties, whilst these are products which are also supplied by other wholesalers, they are actually more often supplied direct by manufacturers. Based on publicly available industry information, the Parties estimate that their combined national market share at wholesale level represents less than [10-20]% of all flu vaccinations undertaken by physicians.
- (50) As indicated above, the Parties have not been in a position to provide reliable data concerning the products distributed at the wholesale level by MASTA.
- (51) Based on this preliminary analysis, the Commission considers that, as the Transaction would significantly affect competition in the wholesale of pharmaceuticals within the UK and the wholesale of flu and travel vaccines could be

³⁰ A regional broad-line wholesaler supplies a broad range of products including branded pharmaceuticals (including some that are subject to general, restricted or exclusive arrangements) and offer a twice-daily delivery service. However, unlike broad-line wholesalers they do not operate on a national level and currently do not participate in UK-wide or Irish-wide tenders for exclusive arrangements. Regional broad-line wholesalers carry out broad-line wholesaling or short-line wholesaling on a regional level.

³¹ See case M.4301 - *Alliance Boots / Cardinal Health*.

³² See paragraphs 101 and 134 of the Form CO.

³³ See paragraph 138 of the Form CO.

included in this market, the CMA is the appropriate authority to assess this aspect of the Transaction.

- (52) The CMA is of the opinion that, at this stage, the Parties have not provided sufficient information to assess whether competition concerns may arise from the removal of MASTA as a competitor. Therefore, the CMA believes that it would need to assess the potential lessening of competition in the distribution of flu and travel vaccines in the UK through the loss of a wholesaler.

6.1.1. Provision of vaccines and travel healthcare services in the UK

- (53) Both Parties (the Notifying Party through its Lloyds retail pharmacy business, the Target through MASTA) provide healthcare travel services to consumers in mainland UK. These services are provided through most retail pharmacies, but mainly through physicians and National Health Service hospitals, as well as private clinics. According to the Parties' estimates, they would not have a combined share exceeding [20-30]% on any market for flu and travel vaccines.

- (54) Nevertheless, the CMA is of the opinion that the Parties have not currently provided sufficient information to assess whether competition concerns may arise from the removal of MASTA. Therefore, the CMA considers that it would need to assess the potential lessening of competition in the provision of vaccines and travel healthcare services nationally and/or locally through the loss of a provider.

- (55) Taking into consideration the fact that the provision of vaccines and travel healthcare services is closely connected with the wholesale supply of flu and travel vaccines, the CMA is the appropriate authority to also assess this market.

6.1.2. Retail pharmacies in the UK (vertically-related market)

- (56) There is no horizontal overlap in the UK, irrespective of the exact geographic market definition, as the Target does not own retail pharmacies.

- (57) The Notifying Party's retail pharmacy business (Lloyds), with an [10-20]% market share (in value), is the second in the UK behind Boots Chemists ([20-30]%). If the Notifying Party's proposed acquisition of Sainsbury's UK retail pharmacy business were considered, the Notifying Party's share would reach [10-20]%.

- (58) The Parties submit that there exist a number of vertically-integrated retail pharmacy business (Boots Chemists with Alliance Boots, Rowlands with Phoenix and Well has its own internal wholesaler), and that there are also a large number of regional competitors that operate in the market with a significant and strong presence in their local areas. The Parties also mention the ability of independent retail pharmacies to form large buyer groups.

- (59) In light of the Parties' market position in the upstream market of wholesale of pharmaceuticals, especially in NI, and in the downstream market for retail pharmacies, it cannot be excluded that the Parties could have both the ability and incentive to foreclose their downstream competitors. Therefore, the assessment of the market for the retail pharmacies is closely linked to the assessment of the upstream markets of wholesale of pharmaceuticals which will be assessed by the CMA.

- (60) Based on this preliminary analysis, the Commission considers that the effects of the Transaction on the market for retail pharmacies warrants closer scrutiny, and as explained further in Section 7, the CMA is the most appropriate authority to deal with this Transaction because it takes place in the UK, has most of its effects in the UK and the CMA has the necessary tools and expertise to assess it.

7. ASSESSEMENT UNDER ARTICLE 9(3) OF THE MERGER REGULATION

- (61) According to Article 9(3) of the Merger Regulation, the Commission may refer the whole or part of the case to the competent authorities of the Member State concerned with a view to the application of that State's national competition law if, following a request for referral by that Member State pursuant to Article 9(2) of the Merger Regulation, the Commission considers that the Transaction threatens to significantly affect competition in a market within that Member State, which presents all the characteristics of a distinct market.
- (62) In deciding whether to refer a case fulfilling the legal criteria for referral, the Commission considers which authority is more appropriate for dealing with the concentration, having regard to the specific characteristics of the case as well as the tools and expertise available to the authority. Particular regard is given to the likely locus of any impact on competition resulting from the concentration.³⁴ Other factors taken into account include legal certainty and the benefits of the 'one-stop-shop' principle. Fragmentation of cases is to be avoided where possible, and it is normally appropriate that, in case of Article 9 referrals, the whole case or at least all connected parts thereof are dealt with by a single authority.³⁵
- (63) In the present case, the parties contend that a referral to the CMA should be limited to the acquisition of the UDS business in NI, and that the Commission should retain and clear the remainder of the Transaction (i.e. MASTA for the UK part of the Transaction) under Article 6(1)b.
- (64) The application of the "one-stop-shop principle" is beneficial to competition authorities and businesses alike and these benefits are taken into account in considering the referral of cases between the Commission and national competition authorities. Handling of a merger by a single competition authority normally increases administrative efficiency, avoiding duplication and fragmentation of enforcement effort as well as potentially incoherent treatment (regarding investigation, assessment and possible remedies) by multiple authorities.
- (65) Given that the horizontal overlaps are all within the UK, there is no negative impact arising from the referral of the Transaction to the CMA being partial (i.e. not including the ROI markets). The Commission was able to assess the vertical overlaps in the ROI with no risk of an inconsistent outcome.
- (66) Fragmenting the analysis pertaining to the wholesale distribution of pharmaceuticals and related services in the UK would run against the principle that all connected

³⁴ See Commission Notice on Case Referral in respect of concentrations, OJ C56, 5.3.2005, p.2 ('Referral Notice'), paragraphs 9 and 37.

³⁵ Referral Notice, paragraphs 11–14.

parts of a case to be dealt with by a single authority. Bearing in mind also the arguments mentioned in paragraphs (52) and (55), the Commission considers that a fragmentation of the case as regards the UK markets is not appropriate.

- (67) In relation to pharmaceutical wholesaling in the UK, the scope of the Transaction is narrower than national, as the Target only operates in NI. Pharmaceutical wholesaling in NI may be distinguished from pharmaceutical wholesaling in mainland UK, as wholesalers would typically require a physical presence in NI (such as depots and vehicle fleet) to operate. In particular, one of the three main full/broad-line wholesalers in the UK (Alliance Boots), does not own a local distribution network in NI, and has therefore subcontracted its wholesaling activities to [...], which acts as a subcontracted agent in NI.
- (68) The competition effects appear to be clearly in the UK, which presents all the characteristics of a distinct market, and more specifically in NI as evidenced above, which supports the appropriateness of referral to the UK.
- (69) In addition, given that the geographic scope of the affected markets may be narrower than national, the case may require investigative efforts at local level, for which the CMA seems to be best placed. The customers in the affected markets are pharmacies, hospitals or end-consumers in NI, and therefore a market investigation carried out by the CMA appears to be best suited to properly reach the demand side of the market, to understand its main characteristics and to deal with possible concerns.
- (70) Therefore the Commission considers that the second requirement of the Article 9(2)(a) test is met, since the Transaction affects markets that are national and/or local in scope (and may also include some regional aspects).
- (71) Without prejudice to a full investigation into the competitive effects of the Transaction, based on the information provided by the Parties in the Form CO and the CMA's knowledge of the UK pharmaceutical sector and relevant national licensing and regulations, the CMA considers on a preliminary analysis that there is a real risk that the transaction may have a significant adverse impact on competition in the UK for the distribution of pharmaceuticals and other related products and services. The Commission concurs with this preliminary assessment. Therefore, the first requirement of Article 9(2)(a) is met, as the Transaction threatens to affect significantly competition.
- (72) The CMA is well-placed to assess the Transaction, as it has previously investigated³⁶ and is currently investigating³⁷ the markets at stake. Furthermore, the Commission has recently referred to the CMA the acquisition by McKesson of Sainsbury's

³⁶ ME/1915/05, *Phoenix/Numark* on 25/09/2005; ME/2035/05 *Admenta/Celesio*, dated 29/11/2005; ME/2134/05, *Boots/Alliance Unichem plc*, dated 06/02/2006. Furthermore, the OFT (predecessor of the CMA until 1 April 2014) published the market study into "Medicines distribution" in December 2007. The CMA also discussed wholesaling in the context of a number of pharmaceuticals in ME/6500-14 *Perrigo Company plc/Omega Pharma Invest NV*, dated 09/03/2015, but this did not require a detailed review of the wholesale market.

³⁷ On 29 December 2015, the CMA referred the anticipated acquisition by the Notifying Party of Sainsbury's Supermarkets Limited UK Pharmacy Business to a phase 2 investigation.

pharmacy business in the UK, which concerned the markets affected by the present Transaction.³⁸

8. CONCLUSION

- (73) In light of the above, the Commission considers that the conditions to request a referral under Article 9(2)(a) Merger Regulation are met and that the competent authorities of the UK are the most appropriate and best placed to carry out a thorough investigation of the Transaction insofar as it concerns markets related to the UK. It is therefore appropriate for the Commission to exercise its discretion under Article 9(3)(b) Merger Regulation and partially refer the Transaction to the UK as regards the markets identified in the Referral Request.
- (74) On the same date as this decision, the Commission has also adopted a decision on the basis of Article 6(1)(b) of the Merger Regulation with regard to the markets in the Republic of Ireland.

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration is referred partially to the competition authority of the United Kingdom of Great Britain and Northern Ireland, pursuant to Article 9(3)(b) of Council Regulation (EC) No 139/2004.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 3.3.2016

For the Commission
(Signed)
Margrethe VESTAGER
Member of the Commission

³⁸ The referral was made under Article 4(4) of the Merger Regulation. See case M.7721 – *Celesio / Sainsbury's UK pharmacy business*. There are also older precedents where the Commission referred cases regarding the wholesale and retail of medical (pharmaceutical) products to the United Kingdom (M.3990 – *Boots/Alliance UniChem*, M.716 – *Gehe / Lloyds*).