EUROPEAN COMMISSION
DG Competition

Case M.9274 - GLAXOSMITHKLINE / PFIZER CONSUMER HEALTHCARE BUSINESS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
Date: 10/07/2019

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EUROPEAN COMMISSION

Brussels, 10.7.2019
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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Subject: **Case M.9274 - GLAXOSMITHKLINE / PFIZER CONSUMER HEALTHCARE BUSINESS**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 17 May 2019, the European Commission ("the Commission") received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which GlaxoSmithKline plc. ("GSK", United Kingdom) will acquire sole control over the consumer health business of Pfizer Inc. ("Pfizer", United States), hereinafter referred to as "Pfizer CH" ("the Transaction"). GSK is referred to as "the Notifying Party" and, together with Pfizer CH, as "the Parties".

1 OJ L 24, 29.1.2004, page 1 (the 'Merger Regulation'). 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.

2 OJ L 1, 3.1.1994, page 3 (the 'EEA Agreement').

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I. THE PARTIES

(2) **GSK** is a global pharmaceutical company headquartered in the United Kingdom. GSK's worldwide consumer health products span across various therapeutic areas, namely (i) pain management, (ii) respiratory health, (iii) nutrition and digestive health, (iv) skin health, and (v) oral health.

(3) **Pfizer CH** consists of the global portfolio of non-prescription (also known as "over-the-counter" or "OTC") pharmaceutical products of Pfizer,[3] a global pharmaceutical company headquartered in the United States. Pfizer CH is active worldwide across various product categories, namely (i) pain management, (ii) respiratory health, (iii) gastrointestinal treatment, (iv) dietary supplements, and (v) personal care products.

II. THE OPERATION

The Transaction

(4) On 19 December 2018, GSK and Pfizer entered into a Stock and Asset Purchase Agreement ("SAPA") whereby: (i) GSK would acquire an equity interest of 68% over Pfizer CH through a newly created company, to which GSK will contribute its own global OTC business at closing,[4] thereby combining both Pfizer CH and GSK consumer health businesses into one single entity ("the Combined CH Business"); and (ii) Pfizer would obtain an equity interest of 32% into the Combined CH Business as part of the consideration for the Transaction, which is structured as an exchange offer.

GSK to exercise sole control over the Combined CH Business

(5) GSK will own the majority of the shares and voting rights into the Combined CH Business. In addition, Pfizer will not: (i) hold veto rights with respect to decisions that are essential for the strategic commercial behaviour of the joint venture; or (ii) make any contribution to the joint venture such as to result in a commonality of shareholders' interests.

(6) In relation to (i), Pfizer will not have veto rights over strategic matters related to the Combined CH Business, including the approval of the business plan and the budget, or the appointment of senior management. The powers conferred to Pfizer

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3 The following exceptions apply: (i) Pfizer will transfer a limited number of prescription products to GSK because certain SKUs of Pfizer CH's brands are sold on prescription in a handful of EEA Member States due to national regulatory requirements; and (ii) Pfizer will retain: a) OTC products that are currently sold by Pfizer's Biopharmaceuticals Group (notably, certain biosimilars) and Upjohn businesses (notably, off-patent solid oral dose legacy brands, including *Lyrica*, *Lipitor*, *Novarsc*, *Viagra* and *Celebrex*); b) products belonging to global brands which are predominantly sold on prescription but a version thereof is also sold OTC (in relation to the EEA, *Diflucan* and *Feldene*); and c) prescription products that have recently switched to OTC in a country or for which Pfizer is pursuing a switch to OTC (in relation to the EEA, these include products marketed under the brands […]).

4 With the exception of certain assets belonging to its Indian business (notably, the *Horlicks* brand), which it has agreed to sell to Unilever (Form CO, Chapter 1, Section 1, paragraph 11).

are intended to protect the value of its minority interest in the joint venture and will not grant it negative control within the meaning of the Merger Regulation.

(7) In relation to (ii), Pfizer will essentially exit the OTC space through the Transaction and, conversely, will not make any "*vital contribution"* to the Combined CH Business in the future. Therefore, the Transaction will not result in a "*high degree of mutual dependency*" between GSK and Pfizer in relation to the "*strategic objectives*" of the Combined CH Business.[5]

(8) Therefore, post-Transaction, GSK will have sole control over the Combined CH Business, which includes Pfizer CH.

Conclusion on the concentration

(9) The Commission therefore concludes that the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

(10) The undertakings concerned have a combined aggregate worldwide turnover in excess of EUR 5 000 million (GSK: EUR 34 433 million; Pfizer CH: EUR 3 073 million). Each of them has an EU-wide turnover in excess of EUR 250 million (GSK: […]; Pfizer CH: […]), and each of them does not achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State.

(11) The Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

1. GENERAL CONSIDERATIONS ON MARKET DEFINITION

1.1. Product market definition

(12) When defining relevant markets in past decisions dealing with finished dose pharmaceutical products,[6] the Commission based its assessment on the following general approach.[7]

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5 Paragraph 77 of the Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95, 16.4.2008) (the "CJN").

6 Finished dose pharmaceuticals ("FDPs") refer to the finished dosage form of pharmaceutical products, which, in other words, are ready to be used by customers. FDPs contain (i) an active pharmaceutical ingredient (or "API", which correspond to the component present within the product that provides the pharmacological action in the body, e.g., *acetyl salicylic acid* in an aspirin tablet), or a combination of APIs; and (ii) other excipients.

7 See, for example, Commission decision of 27 August 2018 in case M.8974 – *Procter & Gamble / Merck Consumer Health Business*; Commission decision of 4 August 2016 in case M.7919 – *Sanofi/Boehringer Ingelheim Consumer healthcare Business*; Commission decision of 05 August 2013 in case M.6969 – *Valeant Pharmaceuticals International/Bausch & Lomb Holdings*;

(13) The Commission noted that medicines may be subdivided into therapeutic classes by reference to the Anatomical Therapeutic Classification ("ATC"), devised by the European Pharmaceutical Marketing Research Association ("EphMRA") and maintained by EphMRA and IQVIA, formerly known as Intercontinental Medical Statistics ("IMS").

(14) The ATC system is a hierarchical and coded four-level system which classifies medicinal products by class according to their indication, therapeutic use, composition, and mode of action. In the first and broadest level (ATC 1), medicinal products are divided into the 16 anatomical main groups. The second level (ATC 2) is either a pharmacological or therapeutic group. The third level (ATC 3) further groups medicinal products by their specific therapeutic indications. Finally, the ATC 4 level is generally the most detailed one (not available for all ATC 3) and refers for instance to the mode of action or any other subdivision of the relevant products.

(15) The Commission has often referred to the third level (ATC 3) as the starting point for defining the relevant product market. However, in a number of cases, the Commission found that the ATC 3 level classification did not yield the appropriate market definition within the meaning of the Commission Notice on the Definition of the Relevant Market.[8] In particular, in relation to originator and generic medicines, the Commission has considered in previous decisions plausible product markets at the ATC 4 level, at a level of a molecule or a group of molecules that are considered interchangeable so as to exercise competitive pressure on one another. However, an overlap in therapeutic uses does not necessarily imply any particular economic substitution patterns between products.[9]

(16) In relation to generic medicines sold on prescription ("Rx"), the Commission has considered in previous decisions that the most plausible product market is generally at the level of a molecule since generics are the closest substitutes to the originator product based on the same molecule. The Commission then assessed the potential for these products to enter into competition with other products by reference to their characteristics, intended therapeutic use, and expected therapeutic and economic substitutability.[10]

Commission decision of 9 August 2010 in case M.5778 – *Novartis/Alcon;* Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline/ Novartis Vaccines Business (Excl. Influenza) / Novartis Consumer Health Business;* Commission decision of 03 August 2010 in case M.5865 – *Teva / Ratiopharm*; Commission decision of 29 June 2010 in case M.8889 – *Teva / PGT OTC.*

8 OJ C 372, 9.12.1997, pages 5 to 13.

9 See for example Commission decision of 4 August 2018 in case M.7919 – *Sanofi/Boehringer Ingelheim Consumer Healthcare Business*; Commission decision of 16 March 2018 in case M.7480 – *Actavis/Allergan*; Commission decision of 28 January 2018 in case M.7379 – *Mylan/Abbott*; Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline/ Novartis Vaccines Business (Excl. Influenza) / Novartis Consumer Health Business*; Commission decision of 28 January 2015 in case M.7276 – *Novartis/GlaxoSmithKline Oncology Business*; and Commission decision of 4 February 2009 in case M.5253 – *SanofiAventis/Zentiva*.

10 Commission decision of 4 February 2009 in case M.7746 – *Teva / Allergan Generics*.

(17) In relation to OTC products, the active ingredient (molecule) appears to play a much more subordinated role, unless it is equivalent to a specific therapeutic/labelled indication (in situations where all products based on the same molecule, and only those, have the same indication).[11] The Commission has considered in previous decisions that the most plausible product market is generally at the level of the therapeutic indication, which may be a sub-division of the ATC 3 or even ATC 4 categories or may combine products belonging to different ATC 3 or ATC 4 categories.[12] In view of these specificities, IQVIA (ex-IMS) has developed a specific classification for OTC products, including the OTC 2, OTC 3, and OTC 4 levels. In previous decisions dealing with OTC products, the Commission has also referred to the OTC 3 level as the starting point for defining the relevant product market in OTC markets.[13]

1.1.1. Distinction OTC and Rx products

(18) There are three main types of regulatory authorisations required in order to bring a new pharmaceutical product to market: manufacturing, distribution and marketing authorisation. When a marketing authorisation is granted, the competent authorities specify the classification of the medicinal product into two categories: (i) subject to medical prescription (Rx), or (ii) not subject to medical prescription (OTC), depending of medical indications or specific precautions of use (for instance adverse reactions).[14]

(19) The Commission has defined in the past separate markets for medicines which can be dispensed only against a prescription and those which can be sold OTC, while acknowledging that in certain circumstances (for example, in cases where the status of the drug is not clearly limited to either OTC or prescription) OTC products may compete with Rx products.[15] Medical indications, side effects, regulatory framework, distribution and marketing tend to differ between these drug categories, even if the active ingredients may sometimes be identical; therefore, OTC and Rx products tend to be part of separate markets.

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11 See for example Commission decision of 4 August 2018 in case M.7919 – *Sanofi/Boehringer Ingelheim Consumer Healthcare Business*.

12 See for example Commission decision of 4 August 2018 in case M.7919 – *Sanofi/Boehringer Ingelheim Consumer Healthcare Business*.

13 See for example Commission decision of 29 June 2018 in case M.8889 – *Teva / PGT OTC Assets*, paragraph 48, 58, 70ff and 84ff; Commission decision of 4 August 2018 in case M.7919 – *Sanofi/Boehringer Ingelheim Consumer Healthcare Business, paragraph 264 and 268;* Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline/ Novartis Vaccines Business (Excl. Influenza) / Novartis Consumer Health Business*, paragraph 197 and Commission decision of 28 January 2015 in case M.6162 – *Pfizer/Ferrosan Consumer Healthcare Business*, paragraph 37.

14 Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline/ Novartis Vaccines Business (Excl. Influenza) / Novartis Consumer Health Business.*

15 See for example Commission decision of 5 August 2013 in case M.6969 – *Valeant Pharmaceuticals International/Bausch & Lomb Holdings*; Commission decision of 9 August 2010 in case M.5778 – *Novartis/Alcon*; Commission decision of 19 December 2008 in case M.5295 – *Teva/Barr*; Commission decision of 28 January 2018 in case M.7379 – *Mylan/Abbott*.

(20) The market investigation did not suggest that departing from previous Commission decisions would be appropriate in this case and, in particular, did not provide particular indications that Rx products exert significant competitive pressure on the OTC products at stake. In any event, as discussed in Section IV.2 and in line with its decisional practice, the Commission has considered potential overlaps between OTC and Rx products, in addition to OTC vs OTC and Rx vs Rx overlaps, where relevant, in order to assess the likely effect of the Transaction on competition.

1.1.2. Other possible segmentations

(21) As the Commission has acknowledged in its decisional practice, medicines are differentiated not only by their active ingredient(s) but also, in particular, as recognized by the European regulatory framework for medicines for human use, by their posology (or dosage), pharmaceutical form, method and route of administration (collectively referred to as "galenic form" in this Decision) which may limit their substitutability.[16] The galenic form of a medicine may in some cases influence the preferences of consumers or be targeted to specific patients groups (for example, children), and therefore, two medicines with the same active ingredient and indications may not be (fully) interchangeable for certain patient groups.[17] Certain medicines can also be indicated only for a specific patient group (for example, adults or children).

1.1.3. Conclusion

(22) The Commission will analyse in Section IV.3 the relevance of the distinctions discussed in the present Section for the specific markets at stake.

1.2. Geographic market definition

(23) The Commission has consistently defined the geographic markets for finished dose pharmaceutical products as being national in scope.[18]

(24) The Notifying Party, in line with the Commission's decisional practice, provided market share data at national level.

(25) The market investigation in this case did not provide any indications that the geographic scope of the markets concerned by the Transaction should be revisited, in particular in view of the national regulatory and reimbursement

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16 See for example Commission decision of 9 August 2010 in case M.5778 – *Novartis/Alcon*; Commission decision of 4 February 2009 in case M.5253 – *SanofiAventis/Zentiva;* Commission decision of 03 August 2010 in case M.5865 – *Teva / Ratiopharm* and Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline/ Novartis Vaccines Business (Excl. Influenza) / Novartis Consumer Health Business.* M.5778 - *Novartis/Alcon*; M.5865 - *Teva/Ratiopharm*, and M.5253 - *Sanofi-Aventis/Zentiva*.

17 See for example Commission decision of 4 August 2018 in case M.7919 – *Sanofi/Boehringer Ingelheim Consumer Healthcare Business* and Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline/ Novartis Vaccines Business (Excl. Influenza) / Novartis Consumer Health Business.*

18 See most recently Commission decision of 20 December 2017 in case M.8675 – *CVC/Teva's Women's Health Business*, paragraph 20.

schemes, and the fact that competition between pharmaceutical suppliers still predominantly takes place at a national level.

(26) Therefore, for the purposes of this Decision, the Commission concludes that the geographic scope of all relevant product markets is national.

2. METHODOLOGY FOR THE IDENTIFICATION AND THE ASSESSMENT OF AFFECTED MARKETS

(27) In line with Commission precedents, the Notifying Party primarily used sales data of pharmaceutical products compiled by IQVIA (ex-IMS) to identify the affected markets that the Transaction gives rise to.

(28) The Notifying Party has provided market shares compiled by IQVIA based on both value and volume. For the purposes of this Decision, in line with previous practice, the Commission has primarily relied on the value of sales as a measure of market shares.[19] Calculating market shares on the basis of value has the advantage of enabling the aggregation of differentiated products in terms of active ingredients, delivery mode, volume container or packaging size, while also reflecting the relative strength of (non-)branded products in the OTC space where brand awareness remains a key driver of competition and pricing. Therefore, the Commission considers that value shares provide a more accurate picture of the market position of the Parties' branded OTC products and of the actual competition they face in each relevant product market.

(29) In relation to OTC vs OTC overlaps, the Notifying Party identified the overlapping indications by following in particular the OTC classification and data of the OTC-IMS database.[20] The Notifying Party also provided information using the ATC classification and data of the MIDAS database,[21] as well as from a separate source for Malta.[22] The OTC vs OTC overlaps between the Parties

19 See, e.g, M.5253 – *Sanofi-Aventis/Zentiva*, paragraph 204. See also M.5865 – *Teva/Ratiopharm*, paragraph 49; M.6613 – Watson/Actavis, paragraph 38.

20 The OTC-IMS database, based on IQVIA's proprietary classification of "OTC" codes", covers the pharmacy channel and, in some countries, other retail channels, and focuses on non-prescription products. The database covers all EEA Member States except Cyprus, Malta, Liechtenstein, Iceland, Denmark, Estonia, Latvia, Lithuania, Luxembourg, and Sweden.

21 The MIDAS database, based on the ATC classification system, only covers the pharmacy channel and includes sales of medical products sold OTC only, both on prescription and OTC, and on prescription only. The database covers all EEA Member States except Cyprus, Malta, Liechtenstein, and Iceland.

22 The Parties' activities overlap in Malta, where IQVIA does not collect data. Therefore, the Notifying Party has provided data collected by a different third party organisation, Misco Malta. However, the Notifying Party notes that such data is based on pharmacies surveys which are not sufficiently representative and may thus not accurately reflect the Parties' and their competitors' position on the relevant markets. The Notifying Party further submits that both Parties only sell their products in Malta via independent distributors and generate very limited sales, which gives them little visibility as to the local market dynamics.

resulting from the Transaction gives rise to a number of affected markets, which will be discussed in the relevant Sections of this Decision.[23]

(30) Pfizer CH includes almost exclusively OTC products; however, due to national requirements, certain SKUs are sold on prescription in certain EEA Member States.[24] In relation to Rx vs Rx overlaps, the Notifying Party identified the overlapping indications by identifying the Rx products contained in the ATC classification and data of the ATC-based IQVIA MIDAS database. As regards Rx vs Rx overlaps, the only overlap that potentially gives rise to an affected market relates to cold and flu treatments in Romania. This overlap will be further discussed in Section IV.3.2.3 of this Decision.

(31) In relation to Rx vs OTC overlaps, the Notifying Party identified the overlapping indications by following in particular the ATC classification and data of the MIDAS database. In that respect, the Transaction gives rise to a number of affected markets, which will be discussed in Section IV.3 of this Decision.

(32) The OTC industry comprises pharmaceutical products that can be purchased without a prescription in pharmacies or, in certain EEA countries, from other retailers such as supermarkets, drugstores, etc. Internet sales may also play a role in certain markets. In this respect, the Notifying Party has not adjusted sales data to take into account sales achieved through alternative distribution channels that may not be covered in the OTC-IMS/MIDAS databases, such as online, mass market, and direct sales to consumers. However, the Notifying Party confirmed that market shares of GSK, Pfizer CH and their competitors are unlikely to vary in any significant manner if additional distribution channels are taken into account, and that, thus, no additional affected markets would arise from the Transaction.[25] Moreover, the results of the market investigation did not contradict the Notifying Party's claim in that respect.

(33) In line with the Commission precedents in the pharmaceutical sector,[26] the Notifying Party classified affected markets in three categories:

– Group 1, where the Parties' combined market share exceeds 35% and the increment exceeds 1%;[27]

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23 The Transaction gives rise to affected markets in topical pain management (in Austria, Belgium, France, Germany, Ireland, Italy, Portugal, and Spain), systemic pain management (in Germany, Greece, Hungary, Ireland, and Malta), cold and flu (in the Czech Republic, France, Hungary, Ireland, Malta, Romania, Slovakia, and the United Kingdom), nutrition and digestive health (in Slovakia), and gastro-intestinal treatments (in Ireland). Regarding gastro-intestinal treatments, as explained in Section IV.3.3, the Transaction gives rise to additional affected markets based on 2016-2018 market shares. However, the Commission does not consider such markets as affected for the purposes of this Decision as GSK terminated the licence relating to the product giving rise to such affected markets (and GSK does not have the right to market these products in the future).

24 Form CO, Chapter 1, Section 1, paragraph 22.

25 Form CO, Chapter 2, Section 7, paragraph 51.

26 See, e.g., Commission decision of 29 June 2018 in case M.8889 - *Teva / PGT OTC Assets*, paragraph 35. See also Commission decision of 15 June 2016 in case M.7919, *Sanofi/Boehringer Ingelheim Consumer Healthcare Business*, paragraph 35.

– Group 2, where the Parties' combined market share exceeds 35% but the increment is below 1%; and

– Group 3, where the Parties' combined market share is between 20% and 35%.

(34) The Commission has analysed all markets affected by the Transaction. However, in line with precedents,[28] Group 3 markets are not discussed individually in this Decision.[29] The Commission assessed the competitive situation on these markets by considering the nature and the number of existing competitors and reached the conclusion that the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market in relation to the markets in question. The results of the market investigation did not contradict this conclusion.

3. HORIZONTAL NON-COORDINATED EFFECTS

(35) The Commission determines whether notified concentrations are compatible with the internal market, by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it, in particular, as a result of the creation or strengthening of a dominant position.

(36) A merger giving rise to significant impediment of effective competition may do so as a result of the creation or strengthening of a dominant position in the relevant market(s). Moreover, mergers in oligopolistic markets involving the elimination of important constraints that the parties previously exerted on each other, together with a reduction of competitive pressure on the remaining competitors, may also result in a significant impediment to effective competition, even in the absence of dominance.[30]

(37) The Commission Guidelines on the assessment of horizontal mergers under the Merger Regulation (the "Horizontal Merger Guidelines")[31] describe horizontal non-coordinated effects as follows: "*A merger may significantly impede effective*

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27 The Notifying Party submitted that the Transaction does not give rise to any Group 1+ markets, that is to say markets where (i) the combined market share is below 35% but only one competitor remains on the market; or (ii) the combined market share exceeds 35% and the increment is below 1% but the party with the small increment is a recent entrant.

28 See for example Commission decision of 29 June 2018 in case M.8889 – *Teva / PGT OTC Assets*, paragraph 36.

29 The Transaction gives rise to Group 3 markets under plausible market definitions in topical pain management (in France and Spain), systemic pain management (in Germany, Greece, Hungary and Ireland), cold and flu (in the Czech Republic, France, Hungary, Ireland, Romania, Slovakia, and the United Kingdom), multivitamins (in Slovakia), and gastro-intestinal treatments (in Ireland). In all these markets, the combined share of the Parties is moderate to low and a number of strong competitors will remain active. In addition, as explained in Section IV.3.3 below and in footnote 23 above, the Transaction gives rise to additional affected markets in the area of gastrointestinal treatments based on 2016-2018 market shares. However, the Commission does not consider such markets as affected for the purposes of this Decision as GSK terminated the licence relating to the product giving rise to such affected markets (and GSK does not have the right to market these products in the future).

30 Horizontal Merger Guidelines, paragraph 25.

31 OJ C 31, 5.2.2004, p. 5.

competition in a market by removing important competitive constraints on one or more sellers who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market."[32]

(38) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force.[33] That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present for significant non-coordinated effects to be likely. The list of factors, each of which is not necessarily decisive in its own right, is also not an exhaustive list.[34]

(39) Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, the entry of new competitors on the market, and efficiencies.

(40) In the present case, the Parties' activities overlap in a number of EEA countries in relation to topical and systemic pain management products, cold and flu treatments, gastrointestinal treatments, multivitamins, laxatives, sedatives and sleeping aids. Affected markets arise only in relation to topical and systemic pain management products, cold and flu treatments, gastrointestinal treatments, and nutrition and digestive health (multivitamins).

3.1. Pain management

3.1.1. Introduction regarding product market definition

(41) Both GSK and Pfizer CH are active in pain management across the EEA. GSK's flagship products include the *Volta*-branded products (which include a number of topical pain relievers available in different formats) and *Panadol* (a systemic pain reliever based on *paracetamol*). On the other hand, Pfizer CH's flagship products include *ThermaCare (*Pfizer CH's main topical pain management product, which is predominantly available as heat patches) and the *Advil* brand (covering

32 Horizontal Merger Guidelines, paragraph 24.

33 Horizontal Merger Guidelines, paragraphs 27 and following.

34 Horizontal Merger Guidelines, paragraphs 24-38.

ibuprofen-based systemic pain relievers, as well as topical pain relievers in France and the Netherlands).

(42) Patients experience pain in different forms, *i.e.*, acute pain (for example, toothaches, muscle sprains), episodic pain (for example, headaches, menstrual pain, muscle strain) or chronic pain (for example, arthritis), and across different parts of the human body, such as in the head, muscles, bones, joints, or mouth.[35]

(43) OTC pain management products are designed to enable consumers to manage various symptoms of pain. These can be (i) topical pain treatments which treat pain symptoms locally by means of topical application to the skin, or (ii) systemic treatments which target pain centrally by means of oral intake.

Commission's precedents

(44) In past decisions, when assessing the relevant products markets, the Commission distinguished the two following types of products managing pain: (i) topical pain management ("TPM") products, which target pain symptoms locally by means of topical application to the skin and (ii) systemic pain management ("SPM") products, which treat pain in a systemic manner by way of oral intake producing effects on the entire body.

The Notifying Party's view

(45) While the Notifying Party insists that it internally approaches pain management products on an overall basis, it acknowledged the Commission's decisional practice to distinguish TPM and SPM products.[36]

Commission's assessment

(46) The market investigation did not provide indications that departing from previous Commission's decisions would be appropriate in this case. Although some market respondents indicated that there may be a certain degree of demand-side substitutability between TPM and SPM products to cure local pain symptoms, the feedback from the market investigation supports the finding that TPM and SPM products are not substitutable to cure wider pain symptoms (i.e. TPM products are not appropriate to cure systemic pain symptoms).[37] In addition, several market participants explained that there is currently a trend away from systemic solutions for the treatment of local pain, which translates in a greater reliance on TPM products, including non-medicated or natural solutions.[38]

Conclusion

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35 Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline/ Novartis Vaccines Business (Excl. Influenza) / Novartis Consumer Health Business*, paragraph 304.

36 Form CO, Chapter 3, Section 6, paragraph 4.

37 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 11.1 and 11.6 and replies to Q3 - Questionnaire to competitors, question 13. See, e.g. retailer indicating that "*SPM can be used instead of TPM, but not vice versa*."

38 Replies to Q3 - Questionnaire to competitors, question 13.1. Minutes of a call with a wholesaler dated 19 March 2019.

(47) On the basis of the elements described above, the Commission considers that TPM and SPM products should be assessed as separate product markets for the purposes of this Decision.

3.1.2. Topical pain management

(48) Both GSK and Pfizer CH offer TPM products in various EEA Member States. GSK owns in particular the leading range of *Volta*-branded products, available in various formats across the EEA: *Volta-ren/-rol/-dol* medicated gel, cream, spray, or patch (based on *diclofenac*), and the recently introduced *Voltadol* non-medicated (heat) patches, as well as *Synthol*/*Syntholkiné* products which include gels and liquids.[39] For its part, Pfizer CH is mainly active in the TPM category through the *ThermaCare* brand, under which it predominantly markets a series of non-medicated heat patches in 16 Member States. Pfizer CH markets limited volumes of medicated gel in three EEA countries under the brands *ThermaCare Schmerzgel* (in Germany), as well as *Kamol*, *AdvilMed gel* and *Advil Gel* (in France and the Netherlands).

3.1.2.1. Product market definition

(49) As explained above, TPM products aim at managing pain by treating symptoms locally by means of topical application to the skin. Some TPM products are medicated, in the sense that they contain a pharmaceutical active ingredient (e.g. *diclofenac* for GSK's *Volta*-branded products), while other TPM products are non-medicated, in the sense that they are based on chemical reactions (such as iron oxidation) or "natural" remedies (including homeopathic or herbal treatments).[40] In addition, TPM products are available in various formats or delivery modes, primarily creams, gels, patches, and sprays.

(50) In terms of ATC classification, medicated TPM products are categorized under the ATC 3 class M2A (Topical Anti-rheumatics and Analgesics).[41] This ATC class, as any other ATC class, only includes medicated products. The OTC classification, however, includes both medicated and non-medicated TPM products within the OTC 3 class 02E1 (Muscular Pain Relief Topical). This OTC class is broken down into six different OTC 4 categories, based on format or delivery mode. Table 1 below sets out the ATC 3 and OTC 3/4 classes relevant for topical pain management products.

39 GSK has also historically marketed a heat patch (only) in France under the Syntholkiné brand.

40 While medicated TPM products require a marketing authorisation to be sold in the EEA, non-medicated TPM products are typically classified as medical devices (which means that they do not require a marketing authorisation to be sold in the EEA but rather a CE mark).

41 This ATC 3 class is not further sub-divided into ATC 4 classes.

Table 1 - TPM treatments – ATC/OTC Classes

ATC Code			OTC Code
Applied to Skin (Topical Products)			
M2A	**Topical Anti-Rheumatics and Analgesics** This ATC 3 class only includes medicated products. This ATC 3 class is not broken down in ATC 4 classes.	**Muscular Pain Relief Topical** This OTC 3 class includes medicated and non-medicated products. This OTC 3 class is broken down into the following OTC 4 codes: • 02E1A Muscular Pain Relief (Topical) - Aerosols/Sprays • 02E1K Muscular Pain Relief (Topical) - Kataplasma • 02E1L Muscular Pain Relief (Topical) - Liquids (Topical) • 02E1O Muscular Pain Relief (Topical) - Ointments/Creams • 02E1W Muscular Pain Relief (Topical) - Baths • 02E1Z Muscular Pain Relief (Topical) - Other Forms.	**02E1**

Source: Form CO, Chapter 3, Section 6

(51) The Commission notes that while the ATC 3 class M2A (Topical Antirheumatics and Analgesics) only includes medicated products (i.e. products containing an API such as *diclofenac* or *ibuprofen*), the OTC 3 class 02E1 (Muscular Pain Relief Topical) includes both medicated and non-medicated products (i.e. products based on "natural" remedies).

(52) In the present case, the Parties' activities overlap in the EEA in relation to the OTC 3 class 02E1 (Muscular Pain Relief Topical) in the 16 EEA Member States where both *Volta*-branded products and *ThermaCare* are marketed (namely, all the Member States where Pfizer is active in the EAA: Austria, Belgium,

Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom).[42]

(53) In two out of these 16 EEA Member States, the Parties' activities also overlap in relation to the ATC 3 class M2A (Topical Anti-rheumatics and Analgesics), namely France and the Netherlands where Pfizer CH markets the *Advil* and *Kamol* creams. Indeed, this ATC 3 class only contains medicated products (such as GSK's *Volta*-branded creams and gels) and does not include non-medicated products (such as Pfizer's *ThermaCare* patches).

Commission's precedents

(54) In previous decisions, the Commission considered that it was appropriate to include in the relevant market all products classified under the ATC3 class M2A (Topical Anti-Rheumatics and Analgesics).[43] This ATC3 class encompasses a large array of medicated ointments, creams and sprays for the treatment of injuries, sprains, muscular tension, *etc.*, which are based on various active ingredients.[44]

(55) The Commission previously considered in some instances potential sub-segmentations within the ATC3 class M2A based on molecules, but ultimately left this question open.[45]

The Notifying Party's view

(56) The Notifying Party acknowledges that the Commission had previously defined topical pain management products under the ATC 3 class M2A (Topical Antirheumatics and Analgesics). However, as Pfizer CH's *ThermaCare* is a non-medicated TPM product, which therefore falls outside of this ATC 3 class M2A but within the OTC 3 class 02E1, the Notifying Party provided data from OTC-IMS (OTC 3 class 02E1) for the purposes of the Commission's assessment.[46]

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42 Form CO, Chapter 3, Section 6, paragraphs 7 and 30. As explained in Form CO, Chapter 3, Section 6, paragraph 7, Pfizer CH has discontinued sales of ThermaCare since 2014 in two Member States ([…] and […]).

43 Commission decision of 9 November 2012 in case M.6706 – *Procter & Gamble/ Teva Pharmaceuticals OTC II*, paragraph 16; and Commission decision of 27 May 2005 in case M.3751 – *Novartis/ Hexal*, page 10. See also Commission decision of 29 June 2018 in case M.8889 – *Teva / PGT OTC Assets*, paragraph 41; and Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline / Novartis Vaccines Business (Excl. Influenza) / Novartis Consumer Health Business*, where the Commission ultimately left the market open, while finding it appropriate to assess the market on the basis of the ATC3 class M2A, and of the molecules within the ATC3 class M2A.

44 Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline / Novartis Vaccines Business (Excl. Influenza)/ Novartis Consumer Health Business*, paragraph 324; see also Commission decision of 27 May 2005 in case M.3751 – *Novartis/ Hexal*, page 10; Commission decision of 9 November 2012 in case M.6706 – *Procter & Gamble/ Teva Pharmaceuticals OTC II*, paragraph 16; Commission decision of 26 April 2004 in case M.3354 – *Sanofi-Synthelabo/Aventis*, paragraph 23; Commission decision of 29 June 2018 in case M.8889 – *Teva/ PGT OTC Assets*, paragraph 39.

45 Commission decision of 29 June 2018 in case M.8889 - *Teva / PGT OTC Assets*, paragraph 43.

46 Form CO, Chapter 3, Section 6, paragraph 39.

(57) The Notifying Party insists that the OTC 3 class 02E1 encompasses highly differentiated products in terms of composition (medicated or not), format (gels, creams, patches, *etc.*), therapeutic indications (joint, muscle pain, *etc.*), usage, consumer perception, sales channels and pricing. While acknowledging national specificities, the Notifying Party claims that medicated gels are distant competitors to heat patches given (i) their different modes of action and administration, customer perception and usage, and regulatory requirements and (ii) their limited cross-price elasticity and supply-side substitution.[47]

Commission's assessment

(58) The results of the market investigation revealed that the vast majority of customers and competitors consider that TPM products are substitutable, regardless of their delivery mode (although different formats may reflect different consumer preferences) or of their underlying molecule.[48]

(59) The majority of respondents to the market investigation, both customers and competitors, also indicated that medicated and non-medicated TPM products are interchangeable for consumers.[49] For instance, a UK-based retailer explained that "*there is a lack of education for medicated vs. non-medicated*".[50] Similarly, competitors explained that "p*atients do not necessarily know which patches are medicated or non medicated*" and that "*medicated and non-medicated patches are clustered in the same subcategory by OTC market analysts (e.g. Nicholas Hall), as these might alternatively be used by patients*".[51] Moreover, it results from the market investigation that the degree of substitutability between medicated and non-medicated TPM products appears even stronger when looking a specific TPM delivery mode (e.g. patches). *[…]*.[52]

(60) From a supply-side perspective, the Commission notes that numerous TPM producers are offering TPM products in different formats. In addition, several TPM producers active in the EEA supply offer both medicated and non-medicated products, including Beiersdorf and Reckitt Benckiser, in addition to the Parties.

(61) Lastly, the market investigation revealed that a segmentation between adult and paediatric products is not relevant in the TPM space and that, generally, "*TPM products are for adult populations*".[53]

(62) Therefore, for the purposes of this Decision, the Commission concludes that the scope of the relevant product market in relation to the topical pain management

47 Form CO, Chapter 3, Section 6, paragraphs 40-42.

48 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 11.2 and 11.3.

49 Replies to Q1 - Questionnaire to pharmacies and retailers, question 11.4. and Replies to Q3 - Questionnaire to competitors, question 14.3.

50 Replies to Q1 - Questionnaire to pharmacies and retailers, question 11.6.

51 Replies to Q3 - Questionnaire to competitors (e.g. question 15.1).

52 Replies to Q3 - Questionnaire to competitors (e.g. question 15.1).

53 Replies to Q3 - Questionnaire to competitors, question 12.2.

category amounts to the 02E1 OTC 3 class, which includes Muscular Pain Relief Topical, both medicated and non-medicated.

3.1.2.2. Geographic market definition

(63) As explained in Section IV.1 of this Decision, the Commission has consistently defined the geographic markets for finished dose pharmaceutical product as being national in scope.[54] In particular, the Commission has consistently defined TPM product markets as national in scope,[55] along with other markets defined on the basis of OTC classes.[56]

(64) The market investigation in this case did not provide any indications that such market definition should be revisited, in particular in view of the differences among EEA Member States in price-setting, regulatory regimes, channels of distribution, and competitive landscape.

(65) Therefore, for the purposes of this Decision, the Commission concludes that the geographical scope of the topical pain management markets is national.

3.1.2.3. Competitive assessment

(66) In the topical pain area, the Transaction gives rise to affected markets with regard to OTC-to-OTC overlaps in the OTC 3 class 02E1 (Muscular Pain Relief Topical). In this product market, the Parties' activities overlap in the 16 Member States where Pfizer CH is active,[57] and give rise to affected markets in following ten Member States:

– Eight Group 1 affected markets in Austria, Belgium, Germany, Ireland, Italy, Netherland, Portugal, and the UK; and

– Two Group 3 affected markets in France and Spain.

(67) In line with the reasoning provided in paragraph 34 of the Decision, Group 3 markets will not be discussed in this Decision.[58]

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54 See most recently Commission decision of 20 November 2018 in case M.8955 - *Takeda / Shire*, paragraphs 56 to 59.

55 See Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline / Novartis Vaccines Business (Excl. Influenza) / Novartis Consumer Health Busines*; M.6705, *Procter & Gamble/Teva Pharmaceuticals OTC II*, Commission decision of 27 May 2005 in case M.3751 - *Novartis/Hexal*; Commission decision of 29 June 2018 in case M.8889 - *Teva / PGT OTC Assets*.

56 See, e.g., Commission decision of 29 June 2018 in case M.8889 - *Teva / PGT OTC Assets*, paragraphs 29-31 and Commission decision of 4 August 2016 in case M. 7919 - *Sanofi/ Boehringer Ingelheim Consumer Healthcare Business*, paragraphs 26-29.

57 Namely, Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom.

58 Group 3 markets arise for Muscular Pain Relief Topical (OTC 3 class 02E1) in France and Spain. Regarding the French market, the Parties' combined market shares reached [20-30]%, [20-30]%, and [20-30]% by value in, respectively, 2016, 2017 and 2018. Pfizer CH's increment amounted to [0-5]%, [0-5]%, and [0-5]% by value in, respectively, 2016, 2017 and 2018. Regarding the Spanish market, the Parties' combined market shares reached [30-40]%, [30-40]%, and [30-40]%

(68) In addition, the Transaction does not give rise to affected markets in any other EEA Member States in relation to OTC-to-Rx overlaps.[59] Moreover, as Pfizer CH does not market any Rx topical pain management product, the Transaction does not give rise to affected markets under any plausible market definition as regards Rx-to-Rx in the topical pain area.

Austria – Muscular Pain Relief Topical (OTC 3 – 02E1)

(69) In Austria, the Transaction gives rise to a Group 1 market for Muscular Pain Relief Topical (OTC 3 class 02E1).

(70) In this market, GSK markets *Voltadol* and *Voltadol Pflaster*, two medicated preparations that contain the active ingredient *diclofenac* and that are respectively available in the form of gel and patch (also known as "plaster"), while Pfizer CH markets *ThermaCare*, a single-use patch (also known as " wrap") based on heat cell technology.[60] Until [Date], Pfizer CH also supplied in Austria a *diclofenac*-based medicated gel under the brand name *ThermaCare Schmerzgel*.[61]

(71) Table 2 below presents the market shares of the Parties and their competitors over the past three years (*i.e.*, 2016, 2017, and 2018) in Austria for Muscular Pain Relief Topical.

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by value in, respectively 2016, 2017 and 2018. Pfizer CH's increment amounted to [0-5]%, [0-5]%, and [0-5]% by value, in, respectively, 2016, 2017, and 2018. Irrespective of whether the Transaction raises doubts as to its compatibility with the internal market as regards TPM products in France and/or in Spain, the Commitments offered by the Parties remove the overlap between GSK and Pfizer CH in this market (almost entirely in France and entirely in Spain), thereby addressing any possible competition concerns.

59 In relation to OTC-to-Rx overlaps, the Transaction gives rise to affected markets in the ATC 3 class M2A in three Member States, namely in Austria (Group 2), France (Group 3) and Germany (Group 3). For the purposes of the Decision, the Commission will not discuss further these potential markets as Pfizer CH does not have any Rx products and the impact of the Transaction for OTC topical pain management is discussed in Section IV.3.1.2 of this Decision. In any event, irrespective of whether the Transaction raises serious doubts as to its compatibility with the internal market as regards Rx and OTC TPM products in Austria, France, and Germany, the Commitments offered by the Parties remove the overlap between GSK and Pfizer CH, entirely in Austria and Germany, and almost entirely in France, thereby addressing any possible competition concerns.

60 The heat cells contain iron, coal, water, and salt that react with air. The chemical reaction, called iron oxidation, provides low-level heat, which increases blood flow and accelerates the body's natural healing process. *ThermaCare* heat wraps are generally used for back, neck, muscle, joint and menstrual pain.

61 For the sake of completeness, the Commission notes that Pfizer also sells *Feldene Gel*, a medicated topical analgesic in Austria. However, *Feldene Gel*, which is only sold Rx, is excluded from the scope of the Transaction and will not be transferred to GSK.

Table 2 – The Parties' and other major suppliers' 2016-2018 Shares of Sales of Muscular Pain Relief Topical products (OTC 3 class 02E1) in Austria

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[40-50]%	[30-40]%	[40-50]%	[30-40]%	[40-50]%	[30-40]%
Pfizer CH	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Combined	***[50-60]%***	***[40-50]%***	***[50-60]%***	***[40-50]%***	***[50-60]%***	***[40-50]%***
Merck	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Heel	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Kwizda	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
JacobyGm Pharm	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Cordes	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Beiersdorf	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Teva	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Genevrier	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Harras pharma	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Takeda	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Apomedica	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Riviera	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Strallhofer	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Form CO, Chapter 3, Section 6

The Notifying Party's view

(72) The Notifying Party argues that the Transaction does not raise competition concerns in Austria for topical pain products because the Parties' product offerings in this market would be highly differentiated and distant competitors. In particular, the Notifying Party insists that GSK's portfolio is exclusively medicated, whereas Pfizer CH only offers a non-medicated patch and discontinued its medicated gel in 2018.[62]

(73) In addition, the Notifying Party argues that the Transaction does not raise competition concerns in Austria because *ThermaCare* would play a very limited role in the TPM market in Austria, as illustrated by Pfizer CH's low market share by volume).[63] The Notifying Party also claims that, in any event, the Combined CH Business will continue to face competition in the medicated TPM segment from a number of competitors active in the pharmacy, mass market and e-commerce segments.[64]

Commission's assessment

62 Form CO, Chapter 3, Section 6, paragraphs 11, 124, and 126.

63 Form CO, Chapter 3, Section 6, paragraph 125.

64 Form CO, Chapter 3, Section 6, paragraph 126.

(74) The Parties' combined market share in Austria over the past three years are high (reaching [50-60]%, [50-60]%, and [50-60]% by value, respectively in 2016, 2017, and 2018). Moreover, contrary to the Notifying Party's assertion, the market share contributed by Pfizer CH in this market is material (reaching [10-20]%, [10-20]%, and [10-20]%by value in, respectively, 2016, 2017 and 2018).

(75) Conversely, the market shares of the Parties' competitors in Austria remain limited, especially when comparing with the Parties' position in this Member State. Post-Transaction, the market share of the Combined CH Business' first competitor, namely Merck, which was acquired in December 2018 by Procter & Gamble,[65] would amount to only [5-10]% (by value). None of the other market players active in TPM in Austria had market shares exceeding [5-10]% (by value) over the past three years.

(76) On this basis, the market share data indicate that post-Transaction, the Combined CH Business will have very high market shares and benefit from a distant leadership position in the topical pain management area (i.e. the Transaction will result in a significant gap between the merged entity, which will be the market leader, and the other topical pain management suppliers). The Transaction would eliminate a significant competitor and reinforce the distant leadership of GSK pre-Transaction, the market leader, over the other topical pain management suppliers. The Combined CH Business' distant leadership will also increase in terms of product offering as, with the Transaction, GSK will acquire an additional TPM product format (i.e. a well-established non-medicated heat patch).

(77) The results of the market investigation have confirmed that market participants consider GSK's *Volta*-brand and Pfizer's *ThermaCare* as two leading brands in the TPM category in various EEA countries, and notably in Austria.[66] For instance, numerous competitors identified GSK and Pfizer CH as their top competitors in the TPM market in Austria.[67] *[…]*.[68] In addition, the majority of Austrian retailers, pharmacies, wholesalers and buying groups view the Parties' brands as "*must-have*" TPM products, i.e. products that they have to offer in their pharmacy to meet patients' demand.[69] Moreover, all the Austrian wholesalers and buying groups who responded to the market investigation identified Pfizer's products amongst their three best-selling products in TPM in Austria in 2018.[70] In addition, the Parties' TPM products benefit from brand loyalty as the majority of wholesalers and buying groups operating in Austria expect that customers would

65 See Commission decision of 27 August 2018 in case M.8974 – *Procter & Gamble/Merck Consumer Health Business.*

66 Replies to Q1 - Questionnaire to pharmacies and retailers (e.g. questions 12, 24; and 25); replies to Q2 - Questionnaire to wholesalers and buying groups (e.g. questions 18, 19, and 20); and replies to Q3 - Questionnaire to competitors (e.g. question 19).

67 Replies to Q3 - Questionnaire to competitors, question 19.

68 Replies to Q3 - Questionnaire to competitors, questions 19.1.

69 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 24 and 25. Replies to Q2 - Questionnaire to wholesalers and buying groups, questions 19.2 and 20.2).

70 Replies to Q2 - Questionnaire to wholesalers and buying groups, question 18.

not switch to alternative products, even in case of a 5-10% price increase of the Parties' TPM product .[71]

(78) Moreover, contrary to the Notifying Party's claim, the results of the market investigation revealed a close competitive interaction between *ThermaCare* and *Volta*-branded products in general, and to a stronger extent in relation to patches. In Austria, for instance, several Austrian retailers and pharmacies indicated that they could recommend a *ThermaCare* product instead of a *Voltaren* product (and vice versa).[72] In addition, all the Austrian retailers and pharmacies indicated that they could recommend *ThermaCare* instead of a GSK non-medicated patch (a product that GSK has started to launch in the EEA but not in Austria to date).[73]

(79) In this context, the Commission notes that the vast majority of competitors that responded to the market investigation, as well as numerous customers, believe that the Transaction will have a negative impact on the TPM segment. For instance, competitors warned of the risks that "*prices will increase because the top competitor market share will be so strong that it will become a price maker*".[74] The results of the market investigation also pointed out to the risk that prices to customers would increase via the reduction of rebates, which would eventually be paid for by end-consumers.[75]

(80) Several competitors expressly mentioned that the Transaction would have a strong impact on the TPM market in Austria. According to competitors, in Austria, "*GSK and Pfizer will achieve a dominant market position in the TPM category*"[76] and the Transaction will have a "*significant impact on competition"*, including because there will be "*less competitive products on the market"*.[77]

(81) A majority of Austrian customers (pharmacies, retailers, wholesalers and buying groups) that responded to the market investigation consider that in Austria the Transaction will likely lead to an increase of TPM prices, including due to lesser rebates granted to pharmacies, a decrease of TPM choices for end-consumers, and a reduced visibility of third party's products in pharmacies and retailers' shelves.[78]

(82) Respondents to the market investigation also indicated that the Combined CH Business' market power will be reinforced by high barriers to entry or expansion. Competitors consider the TPM Austrian market is characterised by high barriers

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71 Replies to Q2 - Questionnaire to wholesalers and buying groups (e.g. question 23).

72 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 15-19.

73 Replies to Q1 - Questionnaire to pharmacies and retailers, question 17.

74 Replies to Q3 – Questionnaire to competitors, question 29.

75 Replies to Q2 – Questionnaire to wholesalers and buying groups, question 29; Replies to Q3 Questionnaire to competitors, question 29.

76 Replies to Q3 – Questionnaire to competitors, question 27.

77 Replies to Q3 – Questionnaire to competitors, question 29.1.

78 Replies to Q1 - Questionnaire to pharmacies and retailers, question 28; replies to Q2 - Questionnaire to wholesalers and buying groups, e.g. question 24; and replies to Q3 – Questionnaire to competitors, e.g. question 31.

to entry due to high investment cost in TV and media spend coupled with strong brand loyalty and awareness.[79] Market respondent pointed out to the risk that the Transaction will lead to "*higher barriers of entry*".[80]

(83) In view of the above and of all available evidence, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market as regards TPM products in Austria, as the Transaction would lead to a creation or strengthening of dominance in this market. However, the commitments offered by the Parties remove entirely the overlap between GSK and Pfizer CH in this market, thereby addressing the competition concerns identified.

Belgium – Muscular Pain Relief Topical (OTC 3 – 02E1)

(84) In Belgium, the Transaction gives rise to a Group 1 market for Muscular Pain Relief Topical (OTC 3 class 02E1).

(85) In this market, GSK markets *Voltaren Emulgel* and *Voltaren Spray,* two *diclofenac*-based products respectively available as gel and spray, as well *Voltapatch Tissuge and Voltaren Patch*, which are *diclofenac*–based patches. For its part, Pfizer CH markets in Belgium *ThermaCare*, the single-use patch based on heat cell technology.

(86) Table 3 below presents the market shares of the Parties and their competitors over the past three years (*i.e.*, 2016, 2017, and 2018) in Belgium for Muscular Pain Relief Topical.

Table 3 – The Parties' and other major suppliers' 2016-2018 Shares of Sales of Muscular Pain Relief Topical products (OTC 3 class 02E1) in Belgium

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	*[60-70]%*	[40-50]%	[50-60]%	[40-50]%	[50-60]%	[40-50]%
Pfizer CH	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	***[60-70]%***	***[40-50]%***	***[60-70]%***	***[40-50]%***	***[50-60]%***	***[40-50]%***
Klosterfrau	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Reckitt Benckiser	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[5-10]%	[5-10]%
Merck	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[5-10]%
Aroma Thera	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Heel	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Boiron	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Qualiphar	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Pi-Pharma	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Teva	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Apotex	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

79 Replies to Q3 – Questionnaire to competitors, question 25.1.

80 Replies to Q3 – Questionnaire to competitors, question 28.1.

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
Stada	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Form CO, Chapter 3, Section 6

The Notifying Party's view

(87) The Notifying Party argues that the Transaction does not raise competition concerns in Belgium for topical pain products because the Parties' product offerings in this market would be highly differentiated and distant competitors, especially because GSK only offers medicated products while Pfizer's *ThermaCare* is a non-medicated patch.[81] The Notifying Party also insists that [Information on product launch strategy] and that its medicated patch represents only [0-5]% share of the market in 2018 (by value).

(88) In addition, the Notifying Party argues that the Transaction does not raise competition concerns in Belgium because, in the medicated TPM segment, the Combined CH Business will continue to face competition from a number of competitors. The Notifying Party also argues that Pfizer's *ThermaCare* is constrained by a number of alternative non-medicated patches and performs poorly.[82]

Commission's assessment

(89) The Commission notes that the Parties' combined market share in Belgium over the past three years are very high (reaching [60-70]%, [60-70]%, and [50-60]% by value, in, respectively, 2016, 2017 and 2018) even though Pfizer CH's increment remains limited ([0-5]%, [0-5]%, and [0-5]% by value in, respectively, 2016, 2017 and 2018).[83]

(90) In Belgium, the market shares of the Parties' competitors are limited, especially when compared with the Parties' position. Post-Transaction, the market share of the Combined CH Business' first competitor, *i.e.* namely Klosterfrau, would amount to only [5-10]% (by value in 2018). Merck would be the only other player active in TPM in Belgium with a market share exceeding [5-10]% (by value) over the past three years.

(91) On this basis, the market share data indicate that, post-Transaction, the Combined CH Business will have very high market shares and benefit from a distant leadership position in the TPM market. The Transaction will eliminate one

81 Form CO, Chapter 3, Section 6, paragraphs 11 and 140.

82 Form CO, Chapter 3, Section 6, paragraph 140.

83 See e.g., Commission decision of 4 August 2015 in case M.7559 - *Pfizer/Hospira*, paragraphs 172-179 and 245-249, where the concentration raised serious doubts in relation to markets for which the increment was below 5%.

competitor, which shares are limited but is otherwise a global-scale competitor. The market share data therefore indicate that the Transaction further reinforces the Combined CH Business' distant leadership in Belgium, even though Pfizer CH's increment remains limited. The Combined CH Business' distant leadership will also increase in terms of product offering as, with the Transaction, GSK will acquire an additional TPM product format (i.e. non-medicated heat patch).

(92) The results of the market investigation have confirmed that the Notifying Party has a strong leadership on the TPM market in Belgium, which will be further reinforced by the Transaction. For instance, the Volta-branded products are recurrently quoted by retailers as the number one recommendation by pharmacists.[84] While it results from the market investigation that *ThermaCare*'s is less strong than GSK's *Volta*-branded products, Pfizer CH's products are however quoted within pharmacists' top-5 recommendation.[85] In addition, some Belgium customers (retailers, pharmacies, wholesalers and buying groups) indicated that they view Pfizer's products as "must-have".[86] In addition, a majority of Belgian intermediary customers (i.e., wholesalers and buying groups) expect that, in case of 5-10% price increase of the Parties' TPM products, customers would not switch their orders from the Parties towards alternative products, especially because "*brand awareness*" plays a strong role in Belgium.[87]

(93) Moreover, contrary to the Notifying Party's claim, the results of the market investigation revealed that there is a degree of competitive closeness between *ThermaCare* and *Volta*-branded products in Belgium as some respondents (retailers and pharmacies) indicated that they could recommend a Pfizer CH TPM product instead of a GSK TPM product (and vice versa).[88] In addition, the vast majority of Belgian retailers and pharmacies indicated that they could recommend *ThermaCare* instead of a GSK non-medicated patch (a product that GSK has started to launch in the EEA but not in Belgium to date).[89] Moreover, half of the wholesalers and buying groups that responded to the market investigation cited *ThermaCare* as one of the three next-best selling alternative to a GSK product.[90]

(94) In this context, the Commission further notes that, as explained above in paragraph 79, the vast majority of competitors that responded to the market investigation, as well as numerous customers, believe that the Transaction will have a negative impact on the TPM segment. In addition, a number of customers (pharmacies, retailers, wholesalers and buying groups) active in Belgium consider

84 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 12.

85 Replies to Q1 - Questionnaire to pharmacies and retailers, question 12.

86 Replies to Q1 - Questionnaire to pharmacies and retailers, question 25. Replies to Q2 – Questionnaires to wholesalers and buying groups, question 19.2.

87 Replies to Q2 – Questionnaires to wholesalers and buying groups, question 23.

88 Replies to Q1 - Questionnaire to pharmacies and retailers, question 18.

89 Replies to Q1 - Questionnaire to pharmacies and retailers, question 17.

90 Replies to Q2 – Questionnaire to wholesalers and buying groups, question 20.1.1.

that the Transaction will have a negative impact on the prices to customers and the availability of shelf space for the Parties' competitors.[91]

(95) In view of the above and of all available evidence, irrespective of whether the Transaction raises serious doubts as to its compatibility with the internal market as regards TPM products in Belgium, the commitments offered by the Parties remove entirely the overlap between GSK and Pfizer CH in this market, thereby addressing any possible competition concerns.

Germany – Muscular Pain Relief Topical (OTC 3 – 02E1)

(96) In Germany, the Transaction gives rise to a Group 1 market for Muscular Pain Relief Topical (OTC 3 class 02E1). On this market, GSK sells *Volta-branded* TPM products in the form of gel/cream, spray, and medicated and non-medicated patches (since December 2018 regarding the latter). In Germany, Pfizer CH markets *Thermacare* heat patches and the *Thermacare Schmerzgel medicated* gel, which is based on the active ingredient *felbinac*.

(97) Table 4 below presents the market shares of the Parties and their competitors over the past three years (*i.e.*, 2016, 2017, and 2018) in Germany for Muscular Pain Relief Topical.

Table 4 – The Parties' and other major suppliers' 2016-2018 Shares of Sales of Muscular Pain Relief Topical products (OTC 3 class 02E1) in Germany

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[40-50]%	[20-30]%	[40-50]%	[20-30]%	[40-50]%	[20-30]%
Pfizer CH	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%
Combined	***[50-60]%***	***[30-40]%***	***[50-60]%***	***[30-40]%***	***[50-60]%***	***[30-40]%***
Merck	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
Teva	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
Hermes	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Beiersdorf	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
Theiss Naturwaren.	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Heel	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Klosterfrau	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Hartmann	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Sanofi	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Districon	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Handelsmarken	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Equimedis	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Novartis	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

91 Replies to Q1 - Questionnaire to pharmacies and retailers, question 28; Replies to Q2 - Questionnaire to wholesalers buying groups, question 24; Replies to Q3 - Questionnaire to competitors, question 29.

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
Stada	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Boehringer Ingel	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Form CO, Chapter 3, Section 6

The Notifying Party's view

(98) According to the Notifying Party, the Transaction does not raise competition concerns in Germany for topical pain products because the best-selling products of GSK (*Voltaren* gel) and Pfizer CH (*ThermaCare* heat patch) are not close competitors as one is a medicated gel while the other is a non-medicated patch. In addition, the German TPM market is dynamic with multiple entries in all product sub-categories.[92]

(99) The Notifying Party also insists that *ThermaCare* plays only a very limited role in the TPM market in Germany as would be illustrated by Pfizer's low market share by volume.[93] In addition, the Notifying Party argues that the Transaction does not raise serious competition concerns in Germany as the medicated gel segment would be dynamic and, in the patch segment, *ThermaCare*'s main competitor is Beiersdorf, not GSK.

Commission's assessment

(100) The Commission notes that Parties' combined market share in Germany over the past three years are very high (reaching [50-60]%, [50-60]%, and [50-60]% by value, respectively in 2016, 2017, and 2018). Moreover, Pfizer CH's increment in this market is also material ([10-20]%, [10-20]%, and [10-20]%, by value, respectively in 2016, 2017, and 2018).

(101) Conversely, the market shares of the Parties' competitors in Germany remain limited, especially when compared with the Parties' position. Post-Transaction, the market share of the Combined CH Business' first competitor, namely Merck, would amount to only [5-10]% (by value) in 2018. Merck would be the only other player active in topical pain management in Germany with market shares exceeding [5-10]% (by value) over the past three years.

(102) On this basis, the market share data indicate that post-Transaction, the Combined CH Business will have very high market shares and benefit from a distant leadership position in the topical pain management area in Germany. The Transaction would eliminate a significant competitor to GSK and reinforce the gap between the market leader and the other topical pain management suppliers.

(103) The results of the market have investigation has confirmed that the Parties' products have a strong leadership on the TPM market in in Germany. In

92 Form CO, Chapter 3, Section 6, paragraph 149.

93 Form CO, Chapter 3, Section 6, paragraph 125.

Germany, the *Volta-branded* and *ThermaCare* products are top TPM products. The vast majority of German pharmacies and retailers, and all the German wholesalers, and buying groups view the Parties' brands as must-have products.[94] It results from the market investigation that *Volta*-branded products are widely mentioned as the number one recommendation by pharmacists, while *ThermaCare* products appear in the top 5 of recommendations.[95] In addition, a majority of (intermediary) customers active in Germany expect that customers would not switch their orders from the Parties towards alternative products, even in case of 5-10% price increase of the Parties' TPM products.[96] On this note, German customers indicated that end-consumer's brand awareness and loyalty is very strong in the TPM market in Germany.[97]

(104) In addition, the results of the market investigation revealed that there is close competitive interaction between *ThermaCare* and *Volta*-branded products.[98] The vast majority of German retailers and pharmacies consider GSK products amongst the most suitable alternatives to *ThermaCare*, while *ThermaCare* products appear in the most suitable alternatives to *Volta*-branded products.[99] The vast majority of German retailers indicated that they could recommend a Pfizer CH TPM product instead of *Voltaren*.[100] Similarly, all German retailers responded that they could recommend a Pfizer CH TPM product instead of the GSK (recently launched) non-medicated patch.[101]

(105) The market investigation also revealed that the Combined CH Business would benefit from a distant leadership position, not only in terms of shares of sales, but also in terms of TPM portfolio as it would offer successful products in the form of gel/cream, spray, and medicated and non-medicated patches.

(106) In this context, the Commission further notes that, as explained above in paragraph 79, the vast majority of competitors that responded to the market investigation, as well as numerous customers, believe that the Transaction will have a negative impact on the TPM segment.

(107) In addition, several competitors expressly mentioned Germany as a Member State where the Transaction would have a significant impact on the TPM market. According to competitors, in Germany, the Transaction will have a "*significant impact on competition"*[102] and *"lead to more market and trade control"* [103] from

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94 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 24 and 25. Replies to Q2 - Questionnaire to wholesalers and buying groups, questions 19.2 and 20.2.

95 Replies to Q1 - Questionnaire to pharmacies and retailers, question 12.

96 Replies to Q2 - Questionnaire to pharmacies and retailers, question 23.

97 Replies to Q1 - Questionnaire to pharmacies and retailers, question 23.

98 Replies to Q1 - Questionnaire to pharmacies and retailers, question 17.

99 Replies to Q1 - Questionnaire to pharmacies and retailers, question 14.

100 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 15-17.

101 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 18-19.

102 Replies to Q3 - Questionnaire to competitors, question 27.1.

103 Replies to Q3 - Questionnaire to competitors, question 28.1.

the merged entity for the following reasons: First, the results of the market investigation pointed out to risks of price increases for TPM products in Germany. This concern was relayed by German customers (pharmacies, retailers and intermediaries)[104], as well as competitors[105], one of which expecting that GSK "*will further increase prices going forward*"[106] given its high market share and the fact that generic competition plays "*only a minor role*". Second, the results of the market investigation revealed concerns of lesser choice of TPM products in Germany. This concern was relayed by German customers[107], as well as competitors, one of which "*expect that the customers will have less choice between relevant TPM products*".

(108) Respondents to the market investigation have also indicated that the Combined CH Business' market power will be reinforced by high barrier to entry. A German-based competitor for instance explained that in the TPM segment post-Transaction, "*the market entry for other competitors will be significantly impeded*". According to the majority of customers, brand awareness and loyalty constitute the main barrier to enter the TPM segment in Germany[108]. Competitors confirmed that building brand awareness requires a very high level of investment, including in the patch segment.[109] As explained by a large-scale competitor, "*considerable financial resources as well as R&D/regulatory efforts are needed to build a new brand in any of the mentioned markets"* and "*financial limitation to build up a new brand requires > 5yrs ROI*".

(109) It further results from the market investigation that the Transaction risks to have a stronger negative impact of the Transaction in the patch sub-segment. As described above, the Parties are both active in this growing sub-segment and barriers to enter the patch segment were described by competitors as higher than to enter the other TPM product-segments because "*registration and manufacturing task need to be performed and take >3 yrs aprox*".

(110) In view of the above and of all available evidence, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market as regards TPM products in Germany, as the Transaction would lead to a creation or strengthening of dominance in this market. However, the commitments offered by the Parties remove most of the overlap between GSK and Pfizer CH in this market, thereby addressing the competition concerns identified.

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104 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 28.1 and 28.2 and Replies to Q2, Questionnaire to wholesalers and buying groups, question 24.2 and 24.3.

105 Replies to Q3 - Questionnaire to competitors, question 28.

106 Replies to Q3 - Questionnaire to competitors, question 29.1.

107 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 28.3 and Replies to Q2, Questionnaire to wholesalers and buying groups, question and 24.4.

108 Replies to Q1 - Questionnaire to pharmacies and retailers, question 23.

109 Replies to Q3 - Questionnaire to competitors, question 25.

Ireland – Muscular Pain Relief Topical (OTC 3 – 02E1)

(111) In Ireland, the Transaction gives rise to a Group 1 market for Muscular Pain Relief Topical (OTC 3 class 02E1).

(112) In this market, GSK sells *Voltarol*, which is marketed in the form of gel and medicated patch (both based on *diclofenac)*. Since Q3 2017, GSK also markets a (non-medicated) heat patch in Ireland. In this market, Pfizer CH markets *ThermaCare* heat patches.

(113) Table 5 below presents the market shares of the Parties and their competitors over the past three years (*i.e.*, 2016, 2017, and 2018) in Ireland for Muscular Pain Relief Topical.

Table 5 – The Parties' and other major suppliers' 2016-2018 Shares of Sales of Muscular Pain Relief Topical products (OTC 3 class 02E1) in Ireland

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[40-50]%	[30-40]%	[40-50]%	[30-40]%	[40-50]%	[30-40]%
Pfizer CH	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Combined	***[50-60]%***	***[40-50]%***	***[60-70]%***	***[50-60]%***	***[50-60]%***	***[40-50]%***
Rohto Corp	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[10-20]%	[20-30]%
Dermal	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
Reckitt Benckiser	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%
Rowa Wagner	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Novartis	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Perrigo	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Shield Health	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Nelson Bach	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Form CO, Chapter 3, Section 6

The Notifying Party's view

(114) According to the Notifying Party, the Transaction does not raise competition concerns in Ireland for topical pain products because the Parties' product offerings in this market would be highly differentiated and distant competitors as Pfizer CH only offers non-medicated *ThermaCa*re heat patches while GSK mainly markets *Voltarol* in the format of a medicated gel and medicated patch, in addition to the *Voltaren* (non-medicated) heat patch launched in late 2017.[110]

(115) The Notifying Party also insists that, on the basis of volume data, the Parties' market share and increment would be much lower.[111]

110 Form CO, Chapter 3, Section 6, paragraph 171.

111 Form CO, Chapter 3, Section 6, paragraph 172.

(116) In addition, the Notifying Party argues that no competition concerns will arise post-Transaction in Ireland for topical pain products because: (i) in the medicated product sub-segment, there is no overlap between the Parties and the Combined CH Business will continue to face the presence of significant competitors such as *Diclac*, *Ibugel* and *Nurofen*; and (ii) in the non-medicated product sub-segment, which is relatively narrow, Pfizer CH does not view GSK's heat patch as a strong competitor, unlike Deep Heat, Boots and other private label products.[112]

Commission's assessment

(117) The Parties' combined market share in Ireland over the past three years are very high (reaching [50-60]%, [60-70]%, and [50-60]% by value, respectively in 2016, 2017, and 2018). Moreover, Pfizer CH's increment in this market is material (reaching [10-20]%, [10-20]%, and [10-20]% by value, respectively in 2016, 2017, and 2018).

(118) Conversely, the market shares of the Parties' competitors in Ireland remain limited, especially when compared to the Parties' position. Post-Transaction, the market share of the Combined CH Business' first competitor, namely Rohto, would amount to [10-20]% (by value) in 2018. Only two other players active in topical pain management in Ireland had market shares exceeding [5-10]% (by value) over the past three years (namely Dermal and Reckitt Benckiser, whose respective shares were lower than [5-10]%).

(119) On this basis, the market share data indicate that post-Transaction, the Combined CH Business will have very high market shares and benefit from a distant leadership position in the topical pain management area. The Transaction would eliminate a significant competitor to GSK and therefore reinforce further the gap between the market leader and the other TPM suppliers.

(120) The results of the market investigation have confirmed that the Parties' products have a leadership position on the TPM market in the EEA, including in Ireland. In Ireland, several retailers and pharmacies indicated that they consider GSK and Pfizer's TPM products as *must-have* products.[113] Moreover, V*oltarol* is widely mentioned as the number one recommendation by pharmacists, while *ThermaCare* products appear in the top 5 of recommendations.[114] Moreover, all the wholesalers and buying groups that responded to the market investigation cited *ThermaCare* amongst their 3 best-selling products in the TPM space in Ireland.[115]

(121) Moreover, contrary to the Notifying Party's claim, the results of the market investigation revealed a close competitive interaction between GSK and Pfizer CH's TPM products in general, and in particular in relation to patches. Thus, Irish retailers and pharmacies indicated that they would recommend *ThermaCare*

112 Form CO, Chapter 3, Section 6, paragraph 173.

113 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 24-25.

114 Replies to Q1 - Questionnaire to pharmacies and retailers, question 12.

115 Replies to Q2 - Questionnaire to wholesalers and buying groups, question 18.

instead of *Volta*-branded products (and vice versa).[116] Moreover, all Irish retailers and pharmacies responded that they could recommend *ThermaCare* instead of a *Volta*-branded heat patch.[117] Similarly, the Irish retailers and pharmacies explained that *ThermaCare* constitutes one of the most suitable alternatives to *Volta*-branded products (and vice versa).[118]

(122) In this context, the Commission further notes that, as explained in paragraph 79, the vast majority of competitors that responded to the market investigation, as well as numerous customers, believe that the Transaction will have a negative impact on the TPM segment. Regarding Ireland in particular, a number of pharmacies and retailers indicated that they believe that the Transaction will lead to higher prices and less choice for consumers.[119]

(123) In view of the above and of all available evidence, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market as regards the TPM segment in Ireland, as it would lead to a creation or strengthening of dominance in this market. However, the commitments offered by the Parties remove entirely the overlap between GSK and Pfizer CH in this market, thereby addressing the competition concerns identified.

Italy – Muscular Pain Relief Topical (OTC 3 – 02E1)

(124) In Italy, the Transaction gives rise to a Group 1 market for Muscular Pain Relief Topical (OTC 3 class 02E1).

(125) In this market, GSK markets a wide range of *Volta*-branded products (*Voltaren Emulgel, Voltadol, Voltadol Termico, Voltalgan), and Iodosan Doloaction* and *Iodosan Action)* in the forms of gel, foam, spray, and patches. Since 2017, GSK also markets a non-medicated heat patch. In Italy, Pfizer CH markets non-medicated heat patches under the *ThermaCare* brand.

(126) Table 6 below presents the market shares of the Parties and their competitors over the past three years (*i.e.*, 2016, 2017, and 2018) in Italy for Muscular Pain Relief Topical.

Table 6 – The Parties' and other major suppliers' 2016-2018 Shares of Sales of Muscular Pain Relief Topical products (OTC 3 class 02E1) in Italy

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Pfizer CH	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Combined	***[40-50]%***	***[30-40]%***	***[40-50]%***	***[30-40]%***	***[40-50]%***	***[30-40]%***
Alfasigma	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%

116 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 12-19.

117 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 12-19.

118 Replies to Q1 - Questionnaire to pharmacies and retailers, question 17.

119 Replies to Q1 - Questionnaire to pharmacies and retailers, question 28.

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
Ibsa	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
Bayer	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Recordati	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%
Pharmanutra	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Chiesi	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Mediolanum	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Menarini	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Boiron	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Mylan	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Theiss naturwaren	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Esi	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Guna	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Dompe	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Pietrasanta pharma	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[20-30]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Form CO, Chapter 3, Section 6

The Notifying Party's view

(127) According to the Notifying Party, the Transaction does not raise competition concerns in Italy for topical pain products because the Parties' main products are not close substitutes. The Notifying Party insists that there is no overlap between the Parties in the medicated product segment, for which GSK does not view *ThermaCare* as a closely competing product, and considers that there are numerous alternatives.

(128) In addition, the Notifying Party argues that in the narrower heat patch segment, *Voltaren Termico* is just one of a range of competitors (including *Lasonil Termico* and *Calmadol*).

(129) The Notifying Party also insists that the Parties' shares are lower on the basis of volume data.[120]

Commission's assessment

(130) The Parties' combined market share in Italy over the past three years are high (reaching [40-50]%, [40-50]%, and [40-50]% by value, respectively in 2016, 2017, and 2018). Moreover, Pfizer CH's increment in this market is material (reaching [5-10]%, [5-10]%, and [5-10]% by value, respectively in 2016, 2017, and 2018).

120 Form CO, Chapter 3, Section 6, paragraph 185.

(131) Conversely, the market shares of the Parties' competitors in Italy remain limited, especially when compared to the Parties' position. Post-Transaction, the market share of the Combined CH Business' first competitor, *i.e.* namely Alfasigma, would amount to [5-10]% (by value) in 2018.

(132) On this basis, the market share data indicate that post-Transaction, the Combined CH Business will have high market shares and benefit from a distant leadership position in the topical pain management area, while the Transaction would eliminate a significant competitor and therefore further reinforce the gap between the market leader and the other topical pain management suppliers.

(133) The results of the market investigation have confirmed that the Parties' products have a strong leadership on the TPM market in Italy. For instance, numerous competitors indicated that GSK and Pfizer were their top competitors in the TPM segment in Italy.[121] A competitor commented that the Parties would have a "*dominant position in TPM*". In addition, the vast majority of Italian customers view the Parties' brand as *must-have* products.[122] Italian pharmacies and retailers mentioned both GSK and Pfizer CH's TPM products as part of the top-5 TPM products they would recommend to patients.[123] The Parties' TPM products benefit from brand loyalty in Italy as a majority of (intermediary) customers expect that, in case of 5-10% price increase of the Parties' TPM products, (retail) customers would not switch their orders from the Parties towards alternative products.[124] More generally, many market respondents insisted on the strong role of "*brand loyalty*" in the TPM space in Italy.[125]

(134) Moreover, contrary to the Notifying Party's claim, the results of the market investigation revealed a close competitive interaction between *ThermaCare* and the *Volta*-branded products, in particular in relation to patches. For instance, several Italian retailers and pharmacies indicated that they could recommend *ThermaCare* instead of a *Voltaren* product (and vice versa), and even more so instead of a *Voltaren* patch (and vice versa).[126] In addition, the results of the market investigation indicate that *ThermaCare* constitutes one of the most suitable alternatives to *Volta*-branded products for retailers and pharmacies (and vice versa).[127]

(135) In this context, the Commission further notes that, as explained in paragraph 79, the vast majority of competitors that responded to the market investigation, as well as numerous customers, believe that the Transaction will have a negative impact on the TPM segment. Regarding Italy in particular, market respondents indicated that the Transaction will have a "*significant impact on competition*";

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121 Replies to Q3 - Questionnaire to Competitors, question 19.

122 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 24 and 25. Replies to Q2 - Questionnaire to wholesalers and pharmacies, questions 19.2 and 20.2.

123 Replies to Q1 - Questionnaire to pharmacies and retailers, question 19.

124 Replies to Q2 – Questionnaires to wholesalers and buying groups, question 23.

125 Replies to Q1 - Questionnaire to pharmacies and retailers, question 23.1.

126 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 1519.

127 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 13 and 14.

"*would generate a strong leadership in each segment of TPM, both on consumer and customers (retailers and distributors)*"; *[...]*.[128] In addition, some customers expect that the Transaction will lead to higher prices and lesser choices for consumers.[129]

(136) Respondents to the market investigation indicated that the Combined CH Business' market power will be reinforced by high barriers to entry or expansion. Generally, competitors indeed consider the TPM Italian market characterised by high barriers to entry including "*media investments*", "*technology*", "*CMO availability*" and "*IP constraints*".[130] *[...]*.[131]

(137) In view of the above and of all available evidence, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market as regards the TPM segment in Italy, as it would lead to a creation or strengthening of dominance in this market. However, the commitments offered by the Parties remove entirely the overlap between GSK and Pfizer CH in this market, thereby addressing the competition concerns identified.

Netherlands – Muscular Pain Relief Topical (OTC 3 – 02E1)

(138) In the Netherlands, the Transaction gives rise to a Group 1 market for Muscular Pain Relief Topical (OTC 3 class 02E1).

(139) In this market, GSK offers *Voltaren* medicated gels and patches that are based on *diclofenac*, as well as a *Voltaren* non-medicated heat patch (since Q4 2017). In the Netherlands, Pfizer CH markets its *ThermaCare* non-medicated heat patch, as well as the *Advil* medicated gel, which is based on *ibuprofen*.

(140) Table 7 below presents the market shares of the Parties and their competitors over the past three years (*i.e.*, 2016, 2017, and 2018) in the Netherlands for Muscular Pain Relief Topical.

Table 7 – The Parties' and other major suppliers' 2016-2018 Shares of Sales of Muscular Pain Relief Topical products (OTC 3 class 02E1) in the Netherlands

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[30-40]%	[20-30]%	[30-40]%	[20-30]%	[30-40]%	[20-30]%
Pfizer CH	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Combined	***[30-40]%***	***[30-40]%***	***[40-50]%***	***[30-40]%***	***[40-50]%***	***[30-40]%***
Schwabe	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Remark b.v.	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Vemedia	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%

128 Replies to Q3 - Questionnaire to competitors, question 27.

129 Replies to Q1 - Questionnaire to pharmacies and retailers, question 28. Replies to Q2 - Questionnaire to wholesalers and buying groups, question 24.

130 Replies to Q3 – Questionnaires to competitors, question 25.

131 Replies to Q3 – Questionnaires to competitors, question 28.

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
OTC medical	[5-10]%	[5-10]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
Perrigo	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%
Biohorma	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Weleda	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[20-30]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Form CO, Chapter 3, Section 6

The Notifying Party's view

(141) According to the Notifying Party, the Transaction does not raise competition concerns in the Netherlands for topical pain products because the Parties are not each other's closest competitor and will continue to face more direct competition. The Notifying Party further claims that, amongst medicated products, Pfizer CH's *Advil* gel only represents a [0-5]% increment and that, amongst non-medicated patches, GSK is not a strong competitor, while there are several other heat patches available, including private label products, and Pfizer CH no longer actively supports *ThermaCare's* growth.[132]

(142) The Notifying Party also argues that the Parties' combined market shares and increment would be more limited on the basis of volume-based shares.[133]

Commission's assessment

(143) The Parties' combined market share in the Netherlands over the past three years are high (reaching [30-40]%, [40-50]%, and [40-50]% by value, respectively in 2016, 2017, and 2018). Moreover, Pfizer CH's increment in this market is material (reaching [5-10]%, [5-10]%, and [5-10]% by value, respectively in 2016, 2017, and 2018).

(144) Conversely, the market shares of the Parties' competitors in the Netherlands remain limited, especially when compared to the Parties'. Post-Transaction, the market share of the Combined CH Business' first competitor, namely Schwabe, would amount to [10-20]% (by value in 2018).[134] None of the other TPM market players active in the Netherlands had market shares exceeding [5-10]% (by value) in 2018.[135]

(145) On this basis, the market share data indicate that, post-Transaction, the Combined CH Business will have high market shares and benefit from a distant leadership position in the TPM area.

132 Form CO, Chapter 3, Section 6, paragraph 199 and 201.

133 Form CO, Chapter 3, Section 6, paragraph 200.

134 Form CO, paragraph 198.

135 Form CO, paragraph 198.

(146) The market investigation has confirmed that the Parties' products have strong leadership on the TPM market in the Netherlands, with limited competition.[136] For instance, Dutch wholesalers noted that "*With the integration of Pfizer, the new combination has a strong position in the market for TPM products. Competitors have weaker brand positioning and the products are in the opinion of consumers for a more superficial indication*"[137] and that "*Voltaren is the well-known market leader in branded TPM OTC products, others follow at a great distance*".[138] Moreover, the vast majority of competitors indicated that generic and private label TPM products exercise limited or no constraint on branded TPM products in the EEA, while listing GSK (extensively) and Pfizer (to a lesser extent) among their top 3 competitors in the TPM segment.[139]

(147) In addition, the vast majority of Dutch pharmacies and retailers mentioned the Parties' TPM products as part of the top-5 TPM products that they would recommend to patients.[140] All Dutch retailers, pharmacies, wholesalers, buyer groups, pharmacies and retailers that responded to the market investigation indicated that GSK's TPM OTC products are must-have.[141] The vast majority of these same respondents also considered Pfizer's products to be must-haves.[142] Moreover, several Dutch wholesalers and buying groups who responded to the market investigation identified Pfizer's products amongst their three best-selling products in TPM in the Netherlands in 2018.[143] Dutch wholesalers and buyer groups also considers patients loyal to GSK and Pfizer CH's TPM products and expect that pharmacies would not switch their orders towards alternative products, even in case of a 5-10% price increase of the Parties' TPM products.[144]

(148) Moreover, the results of the market investigation revealed that there is close competitive interaction between *ThermaCare* and *Volta*-branded products in the Netherlands (patches and gels). For instance, a majority of Dutch retailers and pharmacies indicated that they could recommend a *ThermaCare* product instead

136 Replies to Q3 – Questionnaire to Competitors, question 19.

137 Replies to Q2 – Questionnaire to Wholesalers and Buying Groups, questions 24.1.1, 24.2.1 and 24.3.1.

138 Replies to Q2 – Questionnaire to Wholesalers and Buying Groups, question 18.1.1

139 Replies to Q3 – Questionnaire to Competitors, question 24.

140 Replies to Q1 – Questionnaire to pharmacies and retailers, question 12.

141 Replies to Q1 - Questionnaire to Pharmacies and Retailers, question 24. Replies to Q2 Questionnaire to Wholesalers and Buying Groups, question 20.2; Replies to Q1 – Questionnaire to Pharmacies and Retailers – Question 24.

142 Replies to Q1 - Questionnaire to Pharmacies and Retailers, question 25. Replies to Q2 – Questionnaire to Wholesalers and Buying Groups, question 19.2; Replies to Q1 – Questionnaire to Pharmacies and Retailers – Question 25.

143 Replies to Q2 - Questionnaire to wholesalers and buying groups, question 18.

144 Replies to Q2 – Questionnaire to Wholesalers and Buying Groups, question 23.

of a *Volta*- product.[145] Similarly, a majority of retailers and pharmacies indicated that they could recommend a *Volta*- branded products instead of *ThermaCare*.[146]

(149) In this context, the Commission further notes that, as explained above in paragraph 79, the vast majority of competitors that responded to the market investigation, as well as numerous customers, believe that the Transaction will have a negative impact on the TPM segment, including in terms of higher barriers to entry, higher prices, and less choice. In particular, one competitor indicated that the Netherlands would be "*most affected*" by the negative impact of the Transaction.[147] Several Dutch customers (retailers, pharmacies, wholesalers and buyer groups) also indicated that the Transaction will lead to higher prices and less choice for consumers.[148]

(150) In view of the above and of all available evidence, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market as regards TPM products in the Netherlands, as it would lead to a creation or strengthening of dominance in this market. However, the commitments offered by the Parties remove most of the overlap between GSK and Pfizer CH in this market, thereby addressing the competition concerns identified.

Portugal – Muscular Pain Relief Topical (OTC 3 – 02E1)

(151) In Portugal, the Transaction gives rise to a Group 1 market for Muscular Pain Relief Topical (OTC 3 class 02E1). In this market, GSK markets a *Voltaren* gel and medicated patch, [Information on product launch strategy]. In Portugal, Pfizer CH markets heat patches under the *Thermacare Faixa* name.

(152) Table 8 below presents the market shares of the Parties and their competitors over the past three years (*i.e.*, 2016, 2017, and 2018) in Portugal for Muscular Pain Relief Topical.

Table 8 – The Parties' and other major suppliers' 2016-2018 Shares of Sales of Muscular Pain Relief Topical products (OTC 3 class 02E1) in the Portugal

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
Faes	[40-50]%	[30-40]%	[40-50]%	[30-40]%	[40-50]%	[30-40]%
Pfizer CH	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	***[50-60]%***	***[40-50]%***	***[40-50]%***	***[40-50]%***	***[40-50]%***	***[30-40]%***
Recordati	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Bial	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Almirall	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Merck	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

145 Replies to Q1 - Questionnaire to Pharmacies and Retailers, questions 15-17.

146 Replies to Q1 - Questionnaire to Pharmacies and Retailers, question 18.

147 Replies to Q3 - Questionnaire to Competitors, question 28.1.

148 Replies to Q2 – Questionnaire to Wholesalers and Buying groups, question 24.3.

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
Italfarmaco	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Faes	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Theralab	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Stada	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Silfarmaplus	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Bastos viegas	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Aurobindo	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Grupo tecnimede	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Beiersdorf	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Form CO, Chapter 3, Section 6

The Notifying Party's view

(153) According to the Notifying Party, the Transaction does not raise competition concerns in Portugal for topical pain products because the Parties are not each other's closest competitor. The Notifying Party further claims that, amongst medicated products, there is no overlap and that amongst non-medicated patches, which represent a relatively low share of the demand, there are established competitors and GSK's imminent entry is not expected to change the competitive dynamics.[149]

(154) The Notifying Party also argues that the Parties' combined market shares and increment would be more limited of the basis on volume-based shares.[150]

Commission's assessment

(155) The Parties' combined market share in Portugal over the past three years are high (reaching [50-60]%, [40-50]%, and [40-50]% by value, respectively in 2016, 2017, and 2018), even though the increment brought by Pfizer CH is limited (reaching [0-5]%, [0-5]%, and [0-5]% by value, respectively in 2016, 2017, and 2018).

(156) In Portugal, the market shares of the Parties' competitors are limited, especially when compared to the Parties'. Post-Transaction, the market share of the Combined CH Business' first competitor, namely Bial, which was acquired in December 2018 by Procter & Gamble, would amount to only [5-10]% (by value) in 2018. None of the other players active in topical pain management in Portugal have held market shares exceeding [5-10]% (by value) over the past three years.

(157) On this basis, the market share data indicate that post-Transaction, the Combined CH Business will have high market shares and benefit from a distant leadership

149 Form CO, Chapter 3, Section 6, paragraphs 210 and 212.

150 Form CO, Chapter 3, Section 6, paragraph 211.

position in the TPM area, which will be further reinforced by the Transaction through the removal of a global-scale competitor (whose share is limited but still is a close competitor to the Combined CH Business' [Information on product launch strategy]).

(158) The results of the market investigation have confirmed that market participants consider GSK's *Volta*-brand and Pfizer's *ThermaCare* as two important brands in the TPM category in Portugal. *[…]*.[151] In addition, a number of Portuguese pharmacies and retailers consider that not only *Voltaren* but also *Thermacare* are must-have products.[152] Moreover, a majority of wholesalers and buying groups operating in Portugal considers that customers would not switch towards alternative products, even in case of a 5-10% price increase of the Parties' TPM product,[153] which illustrates patients' brand loyalty toward the Parties' TPM products.[154]

(159) Moreover, the market investigation indicated that there is a competitive interaction between *ThermaCare* and *Volta*-branded products in Portugal. Some retailers indeed indicated that they could recommend GSK products instead of *ThermaCare*.[155] In Portugal, for instance, several Portuguese retailers and pharmacies indicated that they could recommend a *ThermaCare* product instead of a *Voltaren* product (and vice versa).[156] In addition, the vast majority of Portuguese retailers and pharmacies indicated that they could recommend *ThermaCare* [Information on product launch strategy].[157]

(160) In this context, the Commission further notes that, as explained above in paragraph 79, the vast majority of competitors that responded to the market investigation, as well as numerous customers, believe that the Transaction will have a negative impact on the TPM segment, including in terms of higher barriers to entry, higher prices, and less choice.

(161) In Portugal in particular, competitors indicated that the Transaction will be "*increasing even more the dominant position*" of the Combined CH Business *[…]*.[158] The results of the market investigation revealed that competitors fear a negative impact on the competitive dynamics of the TPM market in Portugal. They indeed indicated that the "[T]*ransaction will create a strong player position with powerful negotiation capacities and higher customers demanding behaviour of those products*";[159] *[…]*.[160] Competitors also raised risks of higher barriers to

151 Replies to Q1 - Questionnaire to Pharmacies and Retailers, question 30.

152 Replies to Q1 - Questionnaire to Pharmacies and Retailers, question 25.

153 Replies to Q2 - Questionnaire to wholesalers and buying groups, question 23.

154 Replies to Q1 - Questionnaire to Pharmacies and Retailers, question 23.

155 Replies to Q1 - Questionnaire to Pharmacies and Retailers, questions 18 and 19.

156 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 15-19.

157 Replies to Q1 - Questionnaire to pharmacies and retailers, question 17.

158 Replies to Q3 - Questionnaire to Competitors, question 27.2.

159 Replies to Q3 - Questionnaire to Competitors, question 29.1.

160 Replies to Q3 - Questionnaire to Competitors, question 27.2.

enter the Portuguese market: "*in general it will be more difficult to have more players entering*" the TPM category" *[...]*.[161]

(162) In view of the above and of all available evidence, irrespective of whether the Transaction raises doubts as to its compatibility with the internal market as regards TPM products in Portugal, the commitments offered by the Parties remove entirely the overlap between GSK and Pfizer CH in this market, thereby addressing any possible competition concerns.

United Kingdom – Muscular Pain Relief Topical (OTC 3 – 02E1)

(163) In the United Kingdom, the Transaction gives rise to a Group 1 market for Muscular Pain Relief Topical (OTC 3 class 02E1).

(164) In this market, GSK sells under the *Voltarol*-brand a number of TPM products in the form of (i) diclofenac-based gel, cream, spray, and medicated plaster and (ii) heat patch. On the other hand, Pfizer CH markets *Thermacare* heat patches.

(165) Table 9 below presents the market shares of the Parties and their competitors over the past three years (*i.e.*, 2016, 2017, and 2018) in United Kingdom for Muscular Pain Relief Topical.

Table 9 – The Parties' and other major suppliers' 2016-2018 Shares of Sales of Muscular Pain Relief Topical products (OTC 3 class 02E1) in the United Kingdom

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[30-40]%	[10-20]%
Pfizer CH	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	***[20-30]%***	***[10-20]%***	***[30-40]%***	***[10-20]%***	***[30-40]%***	***[20-30]%***
Stada	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Rohto corp	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Concordia	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[20-30]%
Ddd group	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Patterson	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Nelson bach	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Perrigo	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Kobayashi pharma	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Dermal	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Form CO, Chapter 3, Section 6

161 Replies to Q3 - Questionnaire to Competitors, question 28.1.

The Notifying Party's view

(166) According to the Notifying Party, the Transaction does not raise competition concerns in the United Kingdom for topical pain products because the Parties are not each other's closest competitor. The Notifying Party further claims that, amongst medicated products, there is no overlap and, in the heat patch space, the Parties face competition from well-established players with significant promotional support, as well as a range of private label products, such as those from Boots and Tesco that are not by the IQVVA market shares.[162]

(167) The Notifying Party also argues that the Parties' combined market shares and increment would be more limited on the basis of volume-based shares.[163]

Commission's assessment

(168) The Parties' combined market share in the United Kingdom over the past three years are high (reaching [20-30]%, [30-40]%, and [30-40]% by value, respectively in 2016, 2017, and 2018), even though Pfizer CH is limited ([0-5]%, [0-5]% and [0-5]% by value respectively in 2016, 2017, and 2018).

(169) In the UK, the market shares of the Parties' competitors in the United Kingdom remain limited, especially when compared to the Parties' position. Post-Transaction, the market share of the Combined CH Business' first competitor, namely Rohto, would amount to only [5-10]%. None of the other market players active in TPM in Austria had market shares exceeding [5-10]% (by value) over the past three years.

(170) On this basis, the market share data indicate that post-Transaction, the Combined CH Business will have high market shares and benefit from a distant leadership position in the TPM area, while the Transaction would eliminate a significant competitor to GSK (with global scale and material market share) and reinforce the gap between the market leader and the other topical pain management suppliers.

(171) In addition, the results of the market investigation revealed a close competitive interaction between the products of Pfizer CH and GSK in the TPM market in the United Kingdom. Competitors referred to Pfizer's *ThermaCare* as a close substitute to GSK's *Volta*-branded products.[164] Moreover, the majority of customers (retailers, pharmacies, wholesalers, and buying groups) explained that they would recommend a Pfizer CH TPM product as an alternative for a GSK product, and vice-versa.[165]

(172) In view of the above and of all available evidence, irrespective of whether the Transaction raises serious doubts as to its compatibility with the internal market as regards TPM products in the United Kingdom, the commitments offered by the

162 Form CO, Chapter 3, Section 6, paragraphs 211.

163 Form CO, Chapter 3, Section 6, paragraphs 211.

164 Replies to Q3 – Questionnaire to competitors, question 21, 22 and 23.

165 Replies to Q1 – Questionnaire to pharmacies and retailers, questions 17, 18 and 19.

Parties remove entirely the overlap between GSK and Pfizer CH in this market, thereby addressing any possible competition concerns.

3.1.2.4. Conclusion

(173) In view of the above and of all available evidence, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market in relation to TPM products, as it would lead to a creation or strengthening of a dominant position in various EEA Member States.

(174) However, the commitments offered by the Parties remove almost entirely the overlap between GSK and Pfizer CH in these markets, thereby addressing any competition concerns.

3.1.3. Systemic pain management

(175) While GSK markets SPM products across the EEA, Pfizer CH is active in a more limited number of EEA Member States. GSK's main brand in the SPM space is *Panadol*, which is an OTC *paracetamol*-based product, while Pfizer CH's main brand is *Advil*, which is an *ibuprofen*-based OTC product.[166]

3.1.3.1. Product market definition

(176) In terms of ATC classification, most OTC pain management products are classified in the ATC classes "N2 – Analgesics", "M – Musculo-Skeletal System", or "A – Alimentary Tract and Metabolism". In terms of OTC classification, most products belong to the OTC class 02, as shown in Table 1. Table 10 below summarises the sub-categories of systemic pain management ATC classes N2, M and A, and the one OTC class 02 relevant in the present case.

166 Form CO, Chapter 4, Section 6, paragraph 2. Pfizer CH also sells *paracetamol* and/or *acetylsalicylic acid*-based analgesics only in the UK, Ireland, Malta and Germany. GSK supplies *ibuprofen*-based products only in Italy and Romania (Form CO, Chapter 4, Section 6, footnote 6).

Table 10 - SPM treatments – ATC/OTC Classes

ATC Code			OTC Code
Oral Intake (Systemic Products)			
N2B	Non-Narcotics and Anti-Pyretics	General Pain Relief Adult	**02A1**
		General Pain Relief Paediatric	**02A2**
N2C	Anti-Migraine Preparations	Migraine Relief	**02C1**
M1A	Anti-Rheumatics, Non-Steroidal	Muscle Pain Relief Systemic	**02E2**
M5X	All Other Musculoskeletal Products	Systemic Joint Care Products	**02G2**
G2X1	Gynaecological Antispasmodics	Dysmenorrhea Relief	**02B1**
A3D	Antispasmodic/Analgesic Combinations	Non-Specific Antispasmodics	**02H1**

Source: Form CO, Chapter 4, Section 6, Table SPM 2

(177) At ATC 3 level, the Parties' activities overlap in the EEA only in relation to the ATC 3 classes N2B (which corresponds to the combination of the OTC classes 02A1 and 02A2) and N2C (which corresponds to the OTC 3 class 02C1).

– The ATC 3 class N2B encompasses non-narcotics and anti-pyretic treatments, which are non-specific analgesic products, typically containing either *paracetamol*, or a non-steroidal anti-inflammatory drug ("NSAID"; for example: *ibuprofen* or *diclofenac*), or a combination of both, as well as other active ingredients, such as *caffeine*.[167] The ATC 3 class N2B is further subdivided into two ATC 4 classes: N2B1 (prescription non-narcotics and anti-pyretics) and N2B2 (non-prescription non-narcotics and antipyretics). At ATC 4 level, the Parties overlap in N2B2 that corresponds to the OTC 3 classes 02A1 (adults), which include OTC products for general pain relief for adults only, and (ii) 02A2 (paediatrics), which include OTC products for general pain relief for children only. At the OTC level, the activities of the Parties overlap in relation to 02A1 (for adult products), but not in relation to 02A2 (for children products).

– The ATC 3 class N2C encompasses treatments with *paracetamol* or NSAIDs as active ingredients which are classified as anti-migraine

167 Form CO, Chapter 4, Section 6, paragraph 12.

preparations.[168] This ATC 3 class corresponds to the OTC 3 class 02C1 ("Migraine Relief").

Commission's precedents

(178) In previous decisions, the Commission analysed the ATC 3 class N2B (non-narcotics and anti-pyretics) as a separate product market.[169]

(179) In addition, the ATC 3 class N2B is further subdivided into two ATC 4 classes: N2B1 (prescription non-narcotics and anti-pyretics) and N2B2 (non-prescription non-narcotics and antipyretics), the latter corresponding to the OTC 3 classes 02A1 (adults) and 02A2 (paediatric). As discussed in Section IV.1.1, the Commission has generally considered Rx and OTC products as belonging to separate markets. Thus, in relation to systemic pain management specifically, the Commission previously analysed proposed concentrations at the level of N2B2 / 02A1+02A2 (i.e., OTC products only).[170]

(180) The Commission also considered that a further distinction could be made between pain relief medicines for adults (which corresponds to the OTC 3 class 02A1) and for children (which corresponds to the OTC 3 class 02A2), but has ultimately left the question open.[171]

(181) Finally, the Commission previously considered in limited instances molecule-based markets in general pain relief products[172] and assessed overlaps on the basis of specific molecules across systemic pain relief products (comprising multiple ATC 3 classes), but ultimately left this question open.[173]

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168 Form CO, Chapter 4, Section 6, paragraph 13.

169 Commission decision of 29 June 2018 in case M.8889 – *Teva / PGT OTC Assets*, paragraphs 48 and 49; Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline / Novartis Vaccines Business (Excl. Influenza) / Novartis Consumer Health Business*, paragraph 315; Commission decision of 25 October 2010 in case M.5953 – *Reckitt Benckiser / SSL*, paragraphs 17 to 19; Commission decision of 11 December 2006 in case M.4314 – *Johnson & Johnson / Pfizer Consumer Healthcare*, paragraph 23; Commission decision of 6 January 2006 in case M.4007 – *Reckitt Benckiser/Boots Healthcare*, paragraphs 12 and 36; Commission decision of 26 April 2004 in case M.3354 *Sanofi-Synthelabo/Aventis*, paragraph 99.

170 See for example Commission decision of 4 August 2016 in case M.7919 - *Sanofi / Boehringer Ingelheim Consumer Healthcare Business*, paragraph 115; Commission decision of 19 November 2004 in case M.3544 – *Bayer Healthcare / Roche (OTC Business)*, paragraph 23.

171 Commission decision of 29 June 2018 in case M.8889 – *Teva / PGT OTC Assets*, paragraphs 48 and 49; Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline / Novartis Vaccines Business (Excl. Influenza) / Novartis Consumer Health Business*, paragraph 315; Commission decision of 25 October 2010 in case M.5953 – *Reckitt Benckiser / SSL*, paragraphs 17 to 19; Commission decision of 11 December 2006 in case M.4314 – *Johnson & Johnson / Pfizer Consumer Healthcare*, paragraph 23.

172 See for example Commission decision of 29 June 2018 in case M.8889 – *Teva / PGT OTC Assets*, paragraph 59; Commission decision of 3 August 2018 in case M.5865 – *Teva / Ratiopharm*, paragraph 278.

173 See for example Commission decision of 29 July 2015 in case – M.7645 *Mylan / Perrigo*, paragraphs 65 and 66.

(182) As regards ATC 3 class N2C, the Commission previously assessed the relevant markets at ATC 3 level.[174]

The Notifying Party's view

(183) The Notifying Party argues that the relevant market should be defined at the broad level of SPM treatments, which would include non-narcotic analgesics and anti-pyretics (ATC 3 class N2B), antimigraine preparations (N2C), non-steroidal anti-rheumatics (M1A), all other musculoskeletal products (M5X), antispasmodics (A3D) and gynaecological antispasmodics (G2X1), in particular since these products typically contain the same ingredients (*paracetamol*, NSAIDs, and supplemental ingredients like *caffeine*) and have essentially the same function, that is to say, to manage pain symptoms. The Notifying Party also argues that consumers also consider general systemic pain relief products as substitutes for targeted systemic products such as anti-rheumatics.[175]

(184) Furthermore, the Notifying Party does not consider that a further segmentation between paediatric and adult products would be appropriate since, while the galenic form may differ between the two sets of products, the underlying active ingredient is generally the same.[176]

(185) In any event, the Notifying Party submitted market share data on a more granular basis, in line with the Commission's precedents, and explains that the market definition in this case can be left open, as the Transaction would not raise serious doubts under any plausible market definition.[177]

Commission's assessment

Non-narcotic analgesics and anti-pyretics (ATC 3 – N2B / OTC 3 – 02A1+02A2)

(186) The results of the market investigation did not provide indications that departing from Commission precedents would be appropriate. Therefore, the Commission considers that, for the purposes of this Decision, the market for non-narcotic analgesics and anti-pyretics (i.e., the ATC 3 class N2B or the combination of the OTC 3 classes 02A1 and 02A2) constitutes a separate market.

(187) Furthermore, the market investigation suggested that a segmentation between products intended for adults and paediatric may be appropriate. While the majority of competitors explained that they do not generally segment their SPM products between adult and paediatric pain management, there are differences between the two sets of products, in particular as regards their dosage.[178] Furthermore, the majority of pharmacies and retailers responding to the market

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174 See Commission decision of 4 August 2016 in case M.7919 – *Sanofi / Boehringer Ingelheim Consumer Healthcare Business*, paragraph 278; Commission decision of 28 January 2015 in case M.7379 – *Mylan / Abbott EPD-DM*, paragraph 422.

175 Form CO, Chapter 4, Section 6, paragraph 38.

176 Form CO, Chapter 4, Section 6, paragraph 40.

177 Form CO, Chapter 4, Section 6, paragraph 41.

178 Replies to Q3 - Questionnaire to competitors, question 34.

investigation confirmed that SPM products for use by adults and by children differ, and that patients generally use distinct SPM products to treat the same general symptoms experienced by adults and by children.[179]

(188) As regards a potential distinction based on active ingredients (underlying molecule), the market investigation provided indications that such a distinction would not be appropriate. In particular, the majority of customers and competitors replying to the market investigation explained that SPM products based on different molecules are generally viewed as interchangeable by patients to treat the same general pain symptoms.[180] In addition, as noted in paragraph 175, Pfizer CH largely focuses on *ibuprofen*-based *Advil* products and GSK largely focuses on *paracetamol*-based *Panadol* products, so this segmentation would in several instances result in the elimination of overlaps between the Parties' products in the systemic pain area.[181]

(189) In any event, since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition, the Commission can leave open the question of whether the relevant markets should be further segmented based on the products' indented patients (adults or children) or on underlying molecule.

(190) Finally, as regards the extent to which OTC and Rx products compete with each other in the SPM category, given that the Transaction would not give rise to affected markets in any other Member States should Rx products be taken into account for the purpose of computing market shares, the Commission will consider, for the purposes of this Decision, the relevant markets as encompassing OTC products only.[182]

Anti-migraine preparations (ATC 3 – N2C / OTC 3 – 02C1)

(191) The results of the market investigation did not provide indications that departing from Commission precedents would be appropriate. Therefore, the Commission considers that, for the purposes of this Decision, the market for anti-migraine preparations (i.e., the ATC 3 class N2C, which corresponds to the OTC 3 class 02C1) constitutes a separate market, without any further distinction being relevant.

(192) Finally, as regards the extent to which OTC and Rx products compete with each other in the SPM category, given that the Transaction would not give rise to affected markets in any Member States should Rx products be taken into account

179 Replies to Q1 - Questionnaire to pharmacies and retailers, question 29.4.

180 Replies to Q1 - Questionnaire to pharmacies and retailers, question 29.1 and replies to Q3 - Questionnaire to competitors, question 35.1.

181 In the EEA, the Parties would overlap at the molecule level in only Ireland (*acetylsalicylic acid* and *paracetamol*), Romania (*ibuprofen*) and the UK (*paracetamol*) (Form CO, Chapter 4, Section 6, footnote 28).

182 In relation to OTC-to-Rx overlaps, the Transaction gives rise to an affected markets in the ATC 3 class N2B in Hungary (Group 3). The Commission will not discuss further this potential market as Pfizer CH does not have any Rx products in N2B and the impact of the Transaction for OTC N2B products is discussed in Section IV.3.1.3.3 of this Decision.

for the purpose of computing market shares, the Commission will consider, for the purposes of this Decision, the relevant markets as encompassing OTC products only.

3.1.3.2. Geographic market definition

(193) As explained in Section IV.1.2, the Commission considers the relevant product markets, as defined in Section IV.3.1.3.1, to be national in scope.

3.1.3.3. Competitive assessment

(194) The Transaction does not give rise to affected markets under any plausible market definition as regards Rx-to-Rx overlaps, and OTC-to-Rx overlaps.

(195) In relation to OTC-to-OTC overlaps, the Transaction would give rise to the following affected markets:

– In the market for ATC 3 (N2B) / OTC 3 (02A1+02A2) products (non-narcotics and anti-pyretics), the Parties' activities give rise to two affected markets in Hungary and Greece, both of which are Group 3 markets.[183] If a distinction were made between adult and paediatric products, within the adults segment (OTC 3 class 02A1 - general pain relief for adults), the Parties' activities would give rise to four affected markets: Hungary (Group 1), Malta (Group 2), Ireland (Group 3, on the basis of volume only),[184] and Greece (Group 3). There is no overlap in the paediatrics segment (OTC 3 class 02A2) in the EEA. In light of this, the Commission will assess the markets concerned on the narrowest plausible basis (OTC 3 class 02A1 - general pain relief for adults), which would give rise to one Group 1 market (Hungary) and one Group 2 markets (Malta).[185]

183 Regarding the Greek market for ATC 3 (N2B) / OTC 3 (02A1 – general pain relief for adults), the Parties' combined market shares reached [20-30]%, [20-30]%, and [20-30]% by value, in 2016, 2017, and 2018 respectively. Pfizer CH's increment amounted to [0-5]%, [0-5]%, and [0-5]% by value, in 2016, 2017, and 2018 respectively. Moreover, there will remain strong competitors post-Transaction, notably Bristol-Myers SQB, with market shares of [50-60]%, [50-60]% and [50-60]% by value for the years 2016, 2017 and 2018 respectively; and Reckitt Benckiser, with market shares of [10-20]%, [10-20]% and [5-10]% by value for the years 2016, 2017 and 2018 respectively. Considering the above, it is unlikely that any competition concerns can arise as a result of the Transaction in the markets for ATC 3 (N2B) / OTC 3 (02A1 – general pain relief for adults) products (non-narcotics and anti-pyretics) in Greece.

184 Regarding the Irish market for ATC 3 (N2B) / OTC 3 (02A1 – general pain relief for adults), the Parties' combined market shares reached [20-30]%, [20-30]%, and [20-30]% by volume, in 2016, 2017, and 2018 respectively. Pfizer CH's increment amounted to [0-5]%, [0-5]%, and [0-5]% by volume, in 2016, 2017, and 2018 respectively. Moreover, there will remain strong competitors post-Transaction, such as Reckitt Benckiser, with market shares of [30-40]%, [30-40]% and [30-40]% by volume for the years 2016, 2017 and 2018 respectively; and Perrigo, with market shares of [20-30]%, [20-30]% and [20-30]% by volume for the years 2016, 2017 and 2018 respectively. Considering the above, it is unlikely that any competition concerns can arise as a result of the Transaction in the markets for ATC 3 (N2B) / OTC 3 (02A1 – general pain relief for adults) products (non-narcotics and anti-pyretics) in Ireland.

185 Should the relevant markets be segmented on the basis of the individual or groups of underlying molecules, the Transaction would give rise to affected markets only in Ireland. All the potentially affected markets arising from the Transaction on that basis would be Group 3 markets, with one

– In the market for ATC 3 (N2C) / OTC 3 (02C1) products (anti-migraine preparations), the Parties' activities give rise to one affected market in Germany (Group 3).[186]

(196) In line with the reasoning provided in paragraph 34, Group 3 markets will not be further discussed in this Decision.

Hungary – general pain relief adults (OTC 3 - 02A1)

(197) In Hungary, the Transaction gives rise to a Group 1 market for pain management treatments at OTC 3 (02A1) level, that it to say in relation to general pain relief products for adults.

(198) Table 11 below presents the Parties' and their competitors' market shares (in value and volume) over the past three years.

(199) As regards the Parties' products, GSK sells *Cataflam Dolo* (*diclofenac*-based), *Voltaren Dolo* (*diclofenac*-based) and Panadol (*paracetamol*-based), while Pfizer CH sells Advil (*ibuprofen*-based).

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exception. In a segment comprising *acetylsalicylic acid*-based systemic analgesics (within the same ATC/OTC class or across combinations of ATC/OTC classes), a hypothetically Group 1 market would arise. However, the Commission notes the following. First, as discussed in paragraph 188, the results of the market investigation revealed that segmenting the analgesics category on the basis of the products' underlying molecule does not seem appropriate. Second, GSK's product causing the overlap in this hypothetical segment, *Excedrin*, is in fact a combination product of *acetylsalicylic acid* and *paracetamol* with caffeine, whilst Pfizer CH's product, *Anadin*, is an *acetylsalicylic acid*-based product with caffeine; which means that the overall product formulations are different. Third, market participants did not raise concerns in relation to the impact of the Transaction in Ireland in relation to any specific SPM product. Therefore, in light of these elements, the Commission considers that the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market on a potential market for *acetylsalicylic acid*-based analgesics in Ireland, and therefore will not further discuss this market in this Decision.

186 In the market for ATC 3 (N2C) / OTC 3 (02C1) products (anti-migraine preparations) in Germany, the Parties' combined market shares reached [30-40]%, [20-30]%, and [20-30]%by value, in 2016, 2017, and 2018 respectively. Pfizer CH's increment amounted to [0-5]%, [0-5]%, and [0-5]% by value, in 2016, 2017, and 2018 respectively. Moreover, there will remain strong competitors post-Transaction, such as Johnson & Johnson, with market shares of [30-40]%, [30-40]% and [30-40]% by value for the years 2016, 2017 and 2018 respectively; and Novartis, with market shares of [5-10]%, [10-20]% and [10-20]% by value for the years 2016, 2017 and 2018 respectively. Considering the above, it is unlikely that any competition concerns can arise as a result of the Transaction in the markets for ATC 3 (N2C) / OTC 3 (02C1) products (anti-migraine preparations) in Germany.

Table 11 – Market share data (2016-2018) on the market for general pain relief adults (OTC 3 – 02A1) in Hungary

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[10-20]%
Pfizer CH	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Combined	***[30-40]%***	***[30-40]%***	***[30-40]%***	***[30-40]%***	***[30-40]%***	***[30-40]%***
Sanofi	*[30-40]%*	*[30-40]%*	*[30-40]%*	*[30-40]%*	*[30-40]%*	*[30-40]%*
Bayer	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Reckitt Benckiser	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Gedeon Richter	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
Menarini	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Bene chemie	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
Bausch health	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Table SPM 3 of Form CO and Annex MS 2 – Hungary

The Notifying Party's view

(200) The Notifying Party argues that the Transaction does not raise serious doubts for the following main reasons: (i) the Combined CH Business would have a moderate market share (less than [40-50]% in value and less than [30-40]% in volume); (ii) a number of strong competitors will remain on the market post-Transaction; (iii) the Parties' are not each other closest competitors since their products are based on different molecules and Sanofi is and will remain the market leader.[187]

Commission's assessment

(201) The Commission notes that Combined CH Business's market share will remain below [40-50]% post-Transaction, both in value and in volume, behind the market leader, Sanofi. Other important competitors include major pharmaceutical companies such as Bayer and Reckitt Benckiser.

(202) The results of the market investigation confirmed that while the Parties' products (in particular GSK's *Cataflam Dolo* and *Voltaren Dolo*, and Pfizer's *Advil*) may be considered among the top analgesics available in Hungary, Sanofi's *Algoflex* (*ibuprofen*-based) is consistently considered as the market leader, enjoying a very strong brand recognition.[188] Furthermore, the Parties' products are generally

187 Form CO, Chapter 4, Section 7, paragraphs 71 to 81.

188 Replies to Q1 - Questionnaire to pharmacies and retailers, question 31; replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question 25 and replies to Q3 - Questionnaire to competitors, question 38.

considered as competing more closely with *Algoflex* than with each other.[189] This is consistent with the market share data submitted by the Notifying Party and with the fact that, while the various SPM products compete with each other, the Parties' products are based on different molecules. While GSK's products are either *diclofenac*- or *paracetamol*-based, Pfizer's product is *ibuprofen*-based (same as Sanofi's *Algoflex*). Although GSK's and Sanofi's products are indeed based on different molecules, Sanofi's market position still makes it the strongest competitor for GSK.

(203) Furthermore, the results of the market investigation revealed that brand awareness is a particularly relevant feature in the Hungarian SPM market.[190] In this respect, the Commission notes that other strong brands, including Bayer's *Aspirin* (*acetylsalicylic acid*-based) and Reckitt Benckiser's *Nurofen* (*ibuprofen*-based) – which are identified by market participants as must-have brands[191] – but also local competitors such as Gedeon Richter with *Kalmopyrin* (*acetylsalicylic acid*-based), Menarini with *Ketodex* (*dexketoprofen trometamol*-based) and Bene Chemie with *Ben-U-Ron* (*paracetamol*-based) will remain on the market and will exert competitive pressure on the Combined CH Business. This is also confirmed by GSK's internal documents which show that, in addition to the strong major players present on the market, mid-size players are viewed as [Comment on mid-size players].[192]

(204) In addition, the Commission notes that while brand awareness plays an important role in Hungary, the products in question are based on off-patent, genericised molecules. This makes barriers to entry in this relevant market relatively lower, and suggests that generic suppliers may have the ability and the incentive to enter the market or increase their offer in the event of a price increase.

(205) Finally, the majority of market participants responding to the market investigation believe that the Transaction will not have a negative impact on the market for systemic pain management treatments in Hungary.[193]

(206) In light of the elements discussed in this Section, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market for systemic pain management treatments in Hungary.

Malta – general pain relief adults (OTC 3 - 02A1)

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189 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 32 and 33; replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, questions 26 and 27 and replies to Q3 - Questionnaire to competitors, questions 39 and 40.

190 Replies to Q1 - Questionnaire to pharmacies and retailers, question 37.

191 Replies to Q1 - Questionnaire to pharmacies and retailers, question 40 and replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question 28.

192 Annex SPM 3 to Form CO, internal document of GSK, [Internal document].

193 Replies to Q1 - Questionnaire to pharmacies and retailers, question 41; replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question 30 and replies to Q3 - Questionnaire to competitors, questions 44 and 45.

(207) In Malta, the Transaction gives rise to a Group 2 market for pain management treatments at OTC 3 (02A1) level, that it to say in relation to general pain relief products for adults.[194]

(208) Table 12 below presents the Parties' and their competitors' market shares (in value and volume) over the past three years.

(209) As regards the Parties' products, GSK sells *Panadol* (*paracetamol*-based), while Pfizer CH sold *Anadin* (range of products based on different underlying molecules, i.e. *ibuprofen, paracetamol* and *acetylsalicylic acid*). Pfizer CH discontinued its *Anadin* products and [Pfizer CH strategy in Malta].[195]

Table 12 – Market share data (2016-2018) on the market for general pain relief adults (OTC 3 – 02A1) in Malta

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[60-70]%	N/A	[60-70]%	N/A	[50-60]%	N/A
Pfizer CH	[0-5]%	N/A	[0-5]%	N/A	[0-5]%	N/A
Combined	***[60-70]%***	N/A	***[60-70]%***	N/A	***[60-70]%***	N/A
Perrigo	[10-20]%	N/A	[10-20]%	N/A	[10-20]%	N/A
Reckitt Benckiser	[5-10]%	N/A	[5-10]%	N/A	[5-10]%	N/A
Menarini	[0-5]%	N/A	[0-5]%	N/A	[0-5]%	N/A
Wrafton Laboratories	[0-5]%	N/A	[0-5]%	N/A	[0-5]%	N/A
Delorbis Pharmaceuticals	[0-5]%	N/A	[0-5]%	N/A	[0-5]%	N/A
Others	[5-10]%	N/A	[5-10]%	N/A	[5-10]%	N/A
Total	*100,0%*	N/A	*100,0%*	N/A	*100,0%*	N/A

Source: Table SPM 7 of Form CO

The Notifying Party's view

(210) The Notifying Party argues that the Transaction does not raise serious doubts for the following main reasons: (i) the increment brought by the Transaction is minimal ([0-5]% market share); (ii) a number of strong competitors will remain on the market post-Transaction; (iii) distributors have significant buyer power as drug manufacturers typically use only one distributor (who deals with multiple suppliers) and do not sell the products directly to customers in the country.[196]

Commission's assessment

(211) The Commission notes that while GSK has a strong presence on the market concerned, Pfizer CH has a very negligible presence. The Transaction brings

194 This category corresponds to "oral-take analgesics for adults" in the Misco database.

195 [Pfizer CH strategy in Malta].

196 Form CO, Chapter 4, Section 7, paragraphs 100 to 104.

about an increment in market share of around [0-5]%, which corresponds to *de minimis* sales of EUR [*De minimis* sales]. The results of the market investigation confirmed that Pfizer CH plays a very minor role in the market concerned and that more significant competitors will remain on the market post-Transaction.[197] In particular, other major pharmaceutical companies such as Perrigo, Reckitt Benckiser and Menarini will keep offering analgesics for adults in Malta, together with other regional competitors. Therefore, the Transaction is unlikely to remove any significant competitive constraint from the market.

(212) Finally, the results of the market investigation did not reveal any substantiated concerns as regards the overall impact of the Transaction in the SPM market in Malta.[198]

(213) In light of the elements discussed in this Section, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market for systemic pain management treatments in Malta.

3.1.3.4. Conclusion

(214) In view of the elements discussed in this Section and the evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market for systemic pain management treatments in any EEA Member State.

3.2. Cold and flu treatments

3.2.1. Product market definition

(215) Cold and flu OTC products treat the variety of symptoms generated by nasopharyngitis, rhinopharyngitis, or acute coryzacold (commonly referred to as "the common cold" or simply "a cold") and influenza (commonly referred to as "the flu"). Symptoms from cold and flu are multiple and can be treated by a number of different OTC products. Individuals suffering from cold or flu experience one or more of a number of symptoms including a cough, runny nose, nasal congestion, and a sore throat. Cold and flu OTC products include both multi-symptoms products and single-symptoms products, which include active principles targeting specific symptoms.

(216) In terms of ATC classification, most OTC cold and flu treatments are classified in the ATC class "R – Respiratory System" and, in terms of OTC classification, in OTC class 01. Table 13 below summarises the sub-categories of cold and flu treatments ATC 3 and OTC 3 classes.

197 Replies to Q1 - Questionnaire to pharmacies and retailers, question 31; replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question 25 and replies to Q3 - Questionnaire to competitors, question 38.

198 Replies to Q1 - Questionnaire to pharmacies and retailers, question 41; replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question 30 and replies to Q3 - Questionnaire to competitors, questions 44 and 45.

Table 13 – Cold and flu treatments – ATC/OTC Classes

ATC Code			OTC Code
Nasal Preparations			
R1A	Topical Nasal Preparations	Nasal Decongestants (Topical)	**01B2A**
			01B2D
			01B2L
			01B2O
		Nasal Saline Solutions	**01F1**
R1B	Systemic Nasal Preparations	Nasal Decongestants (Systemic)	**01B2C**
			01B2M
			01B2T
Throat Preparations			
R2A	Throat Preparations	Sore Throat Remedies	**1. 01C1**
Chest Rubs and Other Inhalants			
R4A	Chest Rubs and Other Inhalants	Decongestion Rubs/Inhalants	**01B3**
Cough and Cold Preparations			
R5A	Cold Preparations Without Anti- Infectives	Cold or Flu Remedies	**01B1**
R5C	Expectorants	Expectorants	**01A2**
R5D	Antitussives	Cough Relievers	**01A1**
R5F	Other Cough and Cold Preparations		
All Other Non-Therapeutic Products			
V7A	All Other Non-Therapeutic Products	Products for other Respiratory Conditions	**01V1**

Source: Form CO, Chapter 5, Section 6, Table CF 2

(217) While GSK is active in most of the ATC 3 / OTC 3 classes identified in Table 13, the Parties' activities overlap in the EEA only in relation to ATC 3 classes R5A "Cold Preparations Without Anti- Infectives" and R5D "Antitussives" (which respectively correspond to the OTC 3 classes 01B1 " Cold or Flu Remedies" and 01A1 " Cough Relievers" respectively):

– The ATC 3 class R5A (which corresponds to the OTC 3 class 01B1 "Cold or Flu Remedies") encompasses multi-symptom cold and flu products which target multiple symptoms simultaneously and typically contain an analgesic base (such as *paracetamol*, *ibuprofen* or *acetylsalicylic acid*), combined with other agents such as nasal decongestants, cough suppressants, expectorants and/or antihistamines.[199]

– The ATC 3 class R5D (which corresponds to the OTC 3 class 01A1 "Cough relievers") encompasses antitussives (also known as cough suppressants), which relieve coughs by blocking the cough reflex, and are most effective

199 Form CO, Chapter 5, Section 6, paragraph 18.

relieving dry coughs, based on active ingredients such as *dextromethorphan*.[200]

(218) Pfizer CH is also active in the ATC 3 class R5C "Expectorants" (which corresponds to the OTC 3 class 01A2 "Expectorants").[201] Expectorant stimulate bronchial secretion, reduces the thickness or viscosity of bronchial secretions, thus increasing mucus flow (making it easier to remove mucus through coughing), and are thus particularly effective in treating a productive cough.[202] The Parties' activities do not overlap in this category as GSK sells expectorants only in Italy and Austria (via limited sales), where Pfizer CH is not active.

Commission's precedents

(219) The Commission's starting point in defining the relevant product markets in the cold and flu space has traditionally been the ATC 3 classification. However, in some instances, the Commission departed from the ATC 3 classification and looked in particular at ATC 4 classification or at groups of ATC 3 classes as plausible product markets.

(220) In previous decisions relating to cold and flu treatments, the Commission analysed markets including both multi-symptom products and single symptom products. The Commission thus assessed transactions based on combinations of ATC 3 classes, in particular between multi-symptom products (ATC 3 classification R5A), on the one hand, and chest rubs and other inhalants (R4A), systemic nasal preparations (R1B), nasal decongestants (R1A7) and other topical nasal decongestants (R1A9), on the other hand, but ultimately left the exact market definition open.[203] More recently, the Commission analysed together markets for multi-symptom and topical nasal products,[204] as well as markets for multi-symptom products and throat preparations but ultimately left the exact market definition open.[205]

(221) The Commission also looked at whether different single symptom products might form part of the same relevant market.[206] In particular, the Commission found that expectorants (R5C) and antitussives (R5D) are likely part of different product markets because of their different way of action, and due to the fact that they treat

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200 Form CO, Chapter 5, Section 6, paragraph 19.

201 GSK has very limited sales of expectorants in the EEA, namely in Italy and Austria, which do not overlap with Pfizer CH's.

202 Form CO, Chapter 5, Section 6, paragraph 27.

203 Commission decision of 6 January 2006 in case M.4007 – *Reckitt Benckiser/Boots Healthcare International*, paragraphs 29*;* Commission decision of 11 December 2006 in case M.4314 – *Johnson & Johnson/Pfizer Consumer Healthcare*, paragraph 18.

204 Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline / Novartis Vaccines Business (Excl. Influenza) / Novartis Consumer Health Business*, paragraph 233.

205 Commission decision of 28 January 2015 in case M.7685 – *Perrigo / GSK Divestment Business*, paragraphs 29 to 33.

206 Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline / Novartis Vaccines Business (Excl. Influenza) / Novartis Consumer Health Business*, paragraphs 245 to 248.

different kind of coughs (wet and dry cough respectively), but ultimately left the exact market definition open.[207]

(222) Moreover, the Commission previously considered segmentations at ATC 4 level,[208] as well as whether different galenic forms of cold and flu products formed part of the same market, but ultimately left the exact market definition open.[209]

(223) Finally, Commission precedents examined in limited instances molecule-based markets in cold and flu treatments, in particular cough treatments, but ultimately left open the relevance of such segmentation.[210]

The Notifying Party's view

(224) The Notifying Party submits that GSK and Pfizer CH compete within a broad OTC cold and flu market. As a result, the appropriate product market definition should be broader than each ATC 3 class.

(225) From a demand side perspective, the Notifying Party claims that a cold or flu typically evolves from a sore throat through a blocked or runny nose, fever, and other symptoms (with a cough typically being at its worst towards the end of the cold), and that the boundaries between the different product types are blurred, in particular due to differing customer preferences.

(226) The Notifying Party further argues that cold and flu products are often presented and marketed as a single category by pharmacies, on specific "cold and flu" shelves (or webpages for online pharmacies) on which a variety of different treatments are presented together. The Notifying Party however notes that in some countries, including the UK, cough products are usually presented separately from other cold and flu products.

(227) From a supply side perspective, the Notifying Party claims that it is relatively easy for suppliers to switch production between different cold and flu products, as the same production lines can be used for different products of the same galenic form, including different single-symptom or multi-symptom products.

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207 Commission decision of 8 May 2000 in case M.1846 – *Glaxo Wellcome / Smithkline Beecham*, paragraphs 69*;* Commission decision of 22 May 2000 in case M.1846 – *Pfizer / Warner-Lambert*, paragraphs 40 to 41; Commission decision of 11 December 2006 in case M.4314 – *Johnson & Johnson/Pfizer Consumer Healthcare*, paragraph 19; Commission decision of 16 March 2004 in case M.4367 *APW/APSA/Nordic Capital/CAPIO*, paragraph 27.

208 Commission decision of 25 October 2000 in case M.5953 – *Reckitt Benckiser/ SSL*, paragraphs 12; Commission decision of 30 September 2011 in case M.5953 – *Procter & Gamble/Teva OTC Business*, paragraph 9.

209 Commission decision of 9 September 2012 in case M.6705 – *Procter & Gamble/Teva Pharmaceutic*als *OTC II*, paragraphs 9 to 10; Commission decision of 4 August 2016 in case M.7919 – *Sanofi/Boehringer Ingelheim Consumer healthcare Business*, paragraph 17.

210 Commission decision of 4 August 2016 in case M.7919 – *Sanofi/Boehringer Ingelheim Consumer healthcare Business*, paragraph 12; Commission decision of 25 October 2000 in case M.5953 – *Reckitt Benckiser/ SSL*, paragraph 12.

Commission's assessment

(228) Contrary to the Notifying Party's claim, the market investigation indicates that a broad market encompassing all cold and flu products does not constitute a plausible product market.

(229) A majority of respondents to the market investigation consider that patients view multiple symptom products as interchangeable with single-symptoms products.[211] The same applies in particular with regards to multi-symptom products (which include a cough treatment), on the one hand, and single-symptom cough treatments, on the other hand, which are considered substitutable for a majority of respondents.[212] Conversely, the results of the market investigation confirmed that single product symptoms are typically not considered as interchangeable between each other.[213] In particular, with regards to cough treatments specifically, a majority of respondents consider that patients do not use indistinctively antitussives and expectorants when experiencing cough symptoms.[214] A similar logic applies when looking at ATC 4 level.[215]

(230) In line with precedents relating to other OTC categories (and in particular systemic pain management as explained in Section IV.3.1.3), the results of the market investigation revealed that products aimed at children are likely part of a different product market than those designed for adults. An overwhelming majority of pharmacies view paediatric and adult products as different (including in terms of e.g. labels, formats, or preparations) and a majority of competitors segment their cold and flu products in line with this distinction, in particular due to different dosages and specific regulatory or commercial considerations applying to paediatric products.[216]

(231) In line with precedents, the market investigation indicated that products based on different galenic forms (for instance tablets or liquids) can be considered as interchangeable, in spite of patients potentially having some preferences for specific formats.[217] Similarly, the market investigation did not reveal that a split

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211 Replies to Q1 - Questionnaire to pharmacies and retailers, question 42.1. Replies to Q3 - Questionnaire to competitors, question 51.

212 Replies to Q3 - Questionnaire to competitors, question 54.

213 Replies to Q1 - Questionnaire to pharmacies and retailers, question 42.2. Replies to Q3 - Questionnaire to competitors, question 52.

214 Replies to Q1 - Questionnaire to pharmacies and retailers, question 42.2.2. Replies to Q3 - Questionnaire to competitors, question 53.

215 Among the relevant products, only the antitussives category (R5D) is further subdivided into two ATC 4 classes; R5D1 (plain antitussives) and R5D2 (antitussives in combinations). Antitussives in combinations include both an antitussive active ingredient as well as other treatments including expectorants, antihistamines, ephedrine, and/or herbal tinctures.

216 Replies to Q1 - Questionnaire to pharmacies and retailers, question 42.4. Replies to Q3 - Questionnaire to competitors, question 50.

217 Replies to Q1 - Questionnaire to pharmacies and retailers, question 42.1. Replies to Q3 - Questionnaire to competitors, question 55.

based on the active ingredient in the relevant cold and flu treatment would be relevant.[218]

(232) In view of the above, the Commission concludes that for the purposes of the present case, the most plausible product markets in the cold and flu space consist of ATC 3 / OTC 3 classes or combinations thereof, which can be further segmented based on ATC 4 / OTC 4 class (where relevant), as well as the products' intended user (adult vs paediatric).[219] Hence the competitive assessment will focus on the effects of the Transaction on these segments.

3.2.2. Geographic market definition

(233) As explained in Section IV.1.2, the Commission has historically considered the relevant product markets, as defined in Section IV.3.2.1, to be national in scope.

3.2.3. Competitive assessment

(234) The Transaction gives rise to affected markets at ATC 3 / OTC 3 level or combination thereof in a number of EEA countries, which will be assessed successively below.

(235) These affected markets relate mainly to OTC-to-OTC overlaps (in Czechia, France, Ireland, Malta, Romania, Slovakia, and the United Kingdom), as well as Rx-to-Rx overlaps (in Romania) and OTC-to-Rx overlaps (in Hungary and Romania).[220]

(236) Of these, Group 1 and Group 2 markets arise in Czechia, Hungary, Malta, Romania, Slovakia, and the United Kingdom.[221]

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218 Minutes of a call with a competitors dated 27 February 2019.

219 It is however not necessary to assess paediatric only markets, as the Parties do not overlap for the relevant products in any Member States.

220 Markets which are technically affected on an OTC-to-Rx basis where the Parties do not offer any Rx product will not be assessed separately in the present decision, as assessing those on an OTC-to-OTC (where the Parties' activities overlap) basis is more relevant.

221 As mentioned in paragraph 34, Group 3 markets are not individually discussed in detail in this Decision. Of these affected markets referred to in paragraph 236 of this Decision, Group 3 markets arise for Multi-Symptom Cold & Flu Products and Topical Nasal Preparations (R5A+R1A7+R1A9) in France, Ireland, and Hungary. Regarding the French market, the Parties' combined market shares reached [30-40]%, [20-30]%, and [20-30]% by value, in 2016, 2017, and 2018 respectively. Pfizer CH's increment amounted to [0-5]%, [0-5]%, and [0-5]% by value, in 2016, 2017, and 2018 respectively. Moreover, there will remain strong competitors post-Transaction, such as Sanofi, with market shares of [10-20]%, [20-30]% and [20-30]% by value for the years 2016, 2017 and 2018 respectively; and Groupe Batteur, with market shares of [10-20]%, [10-20]% and [10-20]% by value for the years 2016, 2017 and 2018 respectively. Regarding the Irish market, the Parties' combined market shares reached [20-30]%, [20-30]%, and [20-30]% by value, in 2016, 2017, and 2018 respectively. Pfizer CH's increment amounted to [0-5]%, [0-5]%, and [0-5]% by value, in 2016, 2017, and 2018 respectively. Moreover, there will remain strong competitors post-Transaction, such as Johnson & Johnson, with market shares of [20-30]%, [30-40]% and [30-40]% by value for the years 2016, 2017 and 2018 respectively; and Reckitt Benckiser, with market shares of [10-20]%, [10-20]% and [10-20]% by value for the years 2016, 2017 and 2018 respectively. Regarding the Hungarian market, the Parties' combined market shares reached [20-30]%, [20-30]%, and [30-40]% by value, in 2016, 2017, and 2018 respectively.

Czechia

(237) In Czechia, a Group 1 market arises only in plain antitussives at ATC 4 level (R5D1). Table 14 below presents the Parties' and their competitors' market shares (in value and volume) over the past three years.

Table 14 – Market share data (2016-2018) on the market for plain antitussives (ATC 4 – R5D1) in Czechia

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[20-30]%
Pfizer CH	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%
Combined	***[50-60]%***	***[50-60]%***	***[50-60]%***	***[50-60]%***	***[50-60]%***	***[40-50]%***
Alvogen	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%
Teva	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%
Dr.Max	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[10-20]%
Sanofi	[5-10]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%
Walmark	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Annex INT 16 – Form CO

The Notifying Party's view

(238) The Notifying Party argues that the Transaction does not raise serious doubts for the following main reasons: (i) the AT C4 class is artificially narrow; (ii) a number of strong competitors will remain on the market post-Transaction; and (iii) the Parties are differentiated as they are based on different molecules.[222]

Commission's assessment

(239) The Commission notes that a relatively important share of Pfizer's sales ([5-10]% out of its total [20-30]% market share) come from the sales of *Robitussin Junior*, which is a paediatric treatment. Based on IQVIA, only Pfizer CH sells plain antitussives exclusively marketed towards children in Czechia. There is thus no overlap in this respect with GSK. As mentioned in Section IV.3.2.1, the market investigation indicated that paediatric and adult products form part of distinct product markets. Looking at adult plain antitussives only,[223] the Parties' market

Pfizer CH's increment amounted to [0-5]%, [0-5]%, and [0-5]% by value, in 2016, 2017, and 2018 respectively. Moreover, there will remain strong competitors post-Transaction, such as Sanofi, with market shares of [10-20]%, [10-20]% and [10-20]% by value for the years 2016, 2017 and 2018 respectively; and Merck KGAA, with market shares of [10-20]%, [10-20]% and [10-20]% by value for the years 2016, 2017 and 2018 respectively. Considering the above, it is unlikely that any competition concerns can arise as a result of the Transaction in the markets for Multi-Symptom Cold & Flu Products and Topical Nasal Preparations (R5A+R1A7+R1A9) in France, Ireland or Hungary.

222 Form CO, Chapter 5, Section 7, paragraphs 81 to 89.

223 Revised Annex RFI# 9 – Question 8.

share would drop to around [50-60]% (in terms of value). Furthermore, strong competitors such that Angelini ([20-30]% of market shares by value in 2018) and Teva ([10-20]% of market shares by value in 2018) exert a significant competitive constraint over the Parties.

(240) The market investigation indicates that the Parties' products are not each other's closest competitor. In particular, Teva's *Stoptussin* is consistently mentioned as a top alternative to both *Robitussin* and *Sinecod*, while *Stoptussin* does not belong to the same ATC 4 category (as it belongs instead to ATC 4 class R5D2).[224] Such feedback mitigates the relevance of an assessment limited to the ATC 4 category. Other products competing with the Parties' products, as identified by respondents, include Angelini's *Levopront* and Dr. Max's *Tussical*, Teva's *Ditustat*, Walmark's *Stopex*, Novartis' *ACC*, and Sanofi's *Mucosolvan*, many of which also do not qualify as plain antitussives (and some of which qualify as expectorants), and thus do not belong to the same ATC 4 category either.[225]

(241) Internal documents of the Parties also seem to mitigate the relevance of an assessment limited to the ATC 4 category as they track competing products in both plain antitussives and combined antitussives jointly.[226]

(242) The market investigation further indicates that multi-symptom products may exercise a constraint on antitussives in Czechia. In particular, the results of the market investigation revealed that certain suppliers present their multi-symptom products as substitute for cough treatments, including Sanofi's market leading *Paralen Grip*.[227]

(243) Furthermore, GSK or Pfizer's products do not seem to be considered as must-haves by pharmacies in Czechia.[228] In addition, all of the responding Czech wholesalers consider that pharmacies would switch their orders towards alternative products offered by other pharmaceutical companies should the Combined CH Business apply a price increase to cough treatments post Transaction.[229]

(244) A number of competitors also highlighted the importance of pharmacy chains in Czechia, which translate into a stronger negotiating power, as well as of own label products including in the cold and flu space.[230] Dr. Max, the leading pharmacy chain in Czechia, had no presence in antitussives before 2017 and already captured [5-10]% of the market in 2018 with own label products.

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224 Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, questions 32.1.1 and 33.1.1. Only one respondent lists Robitussin as the closest alternative to Sinecod.

225 Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, questions 32.1.1 and 33.1.1. Replies to Q3 - Questionnaire to competitors, question 63.

226 See the document [Internal document].

227 Replies to Q3 - Questionnaire to competitors, question 54.1.

228 Replies to Q1 - Questionnaire to pharmacies and retailers, question 51 and 52.

229 Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question 35.2.

230 Replies to Q3 - Questionnaire to competitors, question 64.1.

(245) Finally, respondents to the market investigation did not raise specific or substantiated concerns in relation to the cold and flu segment in Czechia.

(246) In view of the elements discussed in this Section, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market for cold and flu treatments in Czechia.

Hungary

(247) In Hungary, at ATC 3 class level (or combinations thereof), the Transaction gives rise to Group 1 affected markets in relation to (i) OTC multi-symptom cold and flu products (ATC 3 - R5A / OTC 3 01B1); (ii) OTC and Rx antitussives (ATC 3 R5D); (iii) OTC and Rx multi-symptom cold and flu treatments and antitussives (combination of ATC 3 classes R5A + R5D); and (iv) OTC multi-symptom cold and flu treatments and topical nasal preparations (combination of ATC 3 classes R5A + R1A7 + R1A9 / OTC 3 classes 01B1 + 01B2A + 01B2D + 01B2L + 01B2O + 01F1).[231]

- ***OTC-to-OTC:* Multi-symptom cold and flu products (R5A/01B1)**

(248) In Hungary, the Transaction gives rise to a Group 1 market for cold and flu treatments at ATC 3 / OTC 3 level, in relation to multi-symptom cold and flu products. GSK offers its *NeoCitran* line of products, whereas Pfizer CH markets *Advil*-branded products.

231 In Hungary, Group 3 markets arise (i) for Multi-Symptom Cold & Flu Products and Throat Preparations (R5A+R2A), (ii) for Multi-Symptom Cold & Flu/Expectorants (R5A/R5C), and (iii0 for Combined Multi-symptom Cold and Flu (R5A), Expectorants (R5C) and Antitussives (R5D). Regarding the Multi-Symptom Cold & Flu Products and Throat Preparations (R5A+R2A) market, the Parties' combined market shares reached [20-30]%, [20-30]%, and [20-30]% by value, in 2016, 2017, and 2018 respectively. Pfizer CH's increment amounted to [0-5]%, [0-5]%, and [0-5]% by value, in 2016, 2017, and 2018 respectively. Moreover, there will remain strong competitors post-Transaction, such as Reckitt Benckiser, with market shares of [10-20]%, [10-20]% and [10-20]% by value for the years 2016, 2017 and 2018 respectively; and Angelini, with market shares of [10-20]%, [10-20]% and [10-20]% by value for the years 2016, 2017 and 2018 respectively. Regarding the Multi-Symptom Cold & Flu/Expectorants (R5A/R5C) market, the Parties' combined market shares reached [20-30]%, [20-30]%, and [20-30]% by value, in 2016, 2017, and 2018 respectively. Pfizer CH's increment amounted to [0-5]%, [0-5]%, and [0-5]% by value, in 2016, 2017, and 2018 respectively. Moreover, there will remain strong competitors post-Transaction, such as Novartis, with market shares of [10-20]%, [10-20]% and [10-20]% by value for the years 2016, 2017 and 2018 respectively; and Bayer, with market shares of [10-20]%, [10-20]% and [5-10]% by value for the years 2016, 2017 and 2018 respectively. Regarding the Combined Multi-symptom Cold and Flu (R5A), Expectorants (R5C) and Antitussives (R5D) market, the Parties' combined market shares reached [20-30]%, [20-30]%, and [20-30]% by value, in 2016, 2017, and 2018 respectively. Pfizer CH's increment amounted to [0-5]%, [0-5]%, and [0-5]% by value, in 2016, 2017, and 2018 respectively. Moreover, there will remain strong competitors post-Transaction, such as Novartis, with market shares of [10-20]%, [10-20]% and [10-20]% by value for the years 2016, 2017 and 2018 respectively; and Bayer, with market shares of [5-10]%, [5-10]% and [5-10]% by value for the years 2016, 2017 and 2018 respectively. Considering the above, it is unlikely that any competition concerns can arise as a result of the Transaction in the markets for Multi-Symptom Cold & Flu Products and Throat Preparations (R5A+R2A), for Multi-Symptom Cold & Flu/Expectorants (R5A/R5C), and for Combined Multi-symptom Cold and Flu (R5A), Expectorants (R5C) and Antitussives (R5D) in Hungary.

(249) Table 15 below presents the Parties' and their competitors' market shares (in value and volume) over the past three years.

Table 15 – Market share data (2016-2018) on the market for multi-symptom cold and flu products (OTC 3 – 01B1) in Hungary

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%	[40-50]%
Pfizer CH	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	***[40-50]%***	***[40-50]%***	***[40-50]%***	***[40-50]%***	***[50-60]%***	***[40-50]%***
Bayer	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Perrigo	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Sanofi	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Boiron	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Pi-Pharma	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Schwabe	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Reckitt Benckiser	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Table CF 6 of Form CO and Annex MS 2 – Hungary to Form CO

The Notifying Party's view

(250) The Notifying Party argues that the Transaction does not raise serious doubts for the following main reasons: (i) the increment from Pfizer CH is minimal; (ii) a number of strong competitors will remain on the market post-Transaction; and (iii) the Parties do not compete closely since their products are based on different formats and molecules.[232]

Commission's assessment

(251) While the combined market shares of the Parties are high, the Commission notes that the increment brought about by Pfizer CH in the multi-symptom cold and flu market in Hungary is minor, as it represents less than [0-5]% in terms of value. Furthermore, the market investigation did not indicate that the level of Pfizer's market shares would underestimate its role in the competitive dynamics of the market. The impact of the Transaction on the competitive structure of the relevant market is thus limited.

(252) The market investigation indicates that GSK, with *NeoCitran*, is considered as a top player for multi-symptom treatments by most respondents. Pfizer CH, on the other hand, is not mentioned as an important player in that area. Other top competitors in the multi-symptom cold and flu market in Hungary listed by

232 Form CO, Chapter 5, Section 7, paragraphs 81 to 89.

respondents to the market investigation include primarily Perrigo and Bayer, in line with their respective market share.[233]

(253) The market investigation also validates the Notifying Party's claim that the Parties' products are not close competitors to each other. None of the respondents to the marker investigation considers *Advil Cold & Flu* as a suitable alternative to *NeoCitran*. The main alternatives cited include instead Perrigo's *Coldrex*, Reckitt Benckiser's *Nurofen Cold and Flu*, Sanofi's *Rubophen*, Procter & Gamble's *Wick Powder*, Bayer's *Aspirin*, Boiron's *Oscillococcinum* and Richter Gedeon's *Kalmopyrin*.[234] Around half of the respondents consider *NeoCitran* as a suitable alternative to *Advil Cold & Flu*, which is understandable in light of its leading market presence. However, *NeoCitran* is only one of many alternatives listed among others, including Perrigo's *Coldrex*, Bayer's *Aspirin*, Reckitt Benckiser's *Nurofen Cold and Flu* and Sanofi's *Rhinatiol*.[235]

(254) The market investigation also indicates that consumers may have stronger preferences towards specific formats in Hungary, in particular for hot drinks, which are perceived as a trend even if, ultimately, the different formats are viewed as interchangeable.[236] While over [90-100]% of GSK's sales of *NeoCitran* in Hungary are of liquid powder formats (and as such qualifies as "hot drinks"), Pfizer CH only offers *Advil* in tablets and capsules, which further indicates that the Parties' products are not particularly close competitors.

(255) Internal documents also confirm that the Parties are not particularly close competitors in the multi-symptom cold and flu market in Hungary. GSK does not consider Pfizer's *Advil* as a key competitor, but instead monitors more closely other products listed above, in particular Perrigo's *Coldrex*, and Bayer's *Aspirin*.[237]

(256) The fact that Advil only represents a minor competitive presence on the Hungarian market is further evidenced by the fact that Hungarian pharmacies/retailers do not seem to consider Pfizer's products to be must-haves.[238] In addition, while an important share of competitors and customers contacted during the investigation emphasized the importance of brands in Hungary,[239] *Advil* does not benefit from a strong brand image in the cold and flu space, as it is more closely associated with SPM.

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233 Replies to Q3 - Questionnaire to competitors, question 59.2.

234 Replies to Q1 - Questionnaire to pharmacies and retailers, question 44.2. Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question 33.1.1. Replies to Q3 - Questionnaire to competitors, question 60.

235 Replies to Q1 - Questionnaire to pharmacies and retailers, question 44.1. Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question 32.1.1. Replies to Q3 - Questionnaire to competitors, question 61.

236 Replies to Q3 - Questionnaire to competitors, question 55.1.

237 See the document [Internal document].

238 Replies to Q1 - Questionnaire to pharmacies and retailers, question 52.

239 Minutes of a call with a wholesaler dated 03 May 2019.

(257) Finally, respondents to the market investigation did not raise specific or substantiated concerns in relation to multi-symptom cold and flu products in Hungary.

(258) The competitive dynamics are similar when looking at adult-only multi-symptom cold and flu products, at which point the Parties' combined market share decreases slightly (by less than [0-5]%), and the increment brought about by Pfizer remains negligible at [0-5]%.[240]

- ***OTC-to-Rx:* Antitussives (R5D)**

(259) GSK does not offer OTC antitussives in Hungary but its *Sinecod* product is available on prescription, which gives rise to an OTC-to-Rx overlap with Pfizer's *Robitussin*, which is sold OTC in the country. Table 16 below presents the Parties' and their competitors' market shares (in value and volume) over the past three years).

Table 16 – Market share data (2016-2018) on the market for (Rx + OTC) antitussives (ATC 3 – R5D) in Hungary

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[30-40]%	[40-50]%	[30-40]%	[40-50]%	[30-40]%	[30-40]%
Pfizer CH	[10-20]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[5-10]%
Combined	***[40-50]%***	***[40-50]%***	***[40-50]%***	***[40-50]%***	***[40-50]%***	***[40-50]%***
Sanofi	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Extractum pharma	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%
Bausch health	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Alkaloida	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Annex RFI#1 Q10.1_EEA ATC3 Groups 1-3 Share Tables, as Hungary S Cut 3

The Notifying Party's view

(260) The Notifying Party argues that the Transaction does not raise serious doubts for the following main reasons: (i) Rx and OTC products form part of separate markets, in particular since OTC products can be advertised, consumers choose OTC products themselves, and such products are not reimbursed in Hungary; (ii) GSK's products is only sold on prescription; (iii) the Parties do not trace each other's products; and (iv) the Parties' products are based on different active ingredients.

240 The Parties' activities do not overlap for paediatric products concerning multi-symptom cold and flu products (OTC 3 – 01B1) in Hungary.

Commission's assessment

(261) The market investigation indicates that the Parties' products are not particularly close competitors and there are many viable alternatives in the antitussive segment. *Sinecod* is sold Rx, while *Robitussin* is sold OTC. None of the responding customers to the market investigation, and only one competitor, list GSK's *Sinecod* as a top alternative to Pfizer's *Robitussin*. Competing products cited include instead Novartis' *ACC*, Sanofi's *Rhinathiol Tusso*, Boiron's *Stodal*, Dr Theiss' *Plantago* and Aramis Pharma's *Fluimucil*.[241] Similarly, no respondent considers *Robitussin* as the best alternative to *Sinecod* and only a very small minority of respondents consider it as the second or third best alternative. Respondents typically instead list Novartis' *ACC*, Teva's *Ambroxol*, Bausch's *Mucopront*, Dr Theiss' *Plantago*, Klosterfrau's *Icelandic Moss*, Microse's *Orvosi*, or Sanofi's *Rhinatiol* and *Libexin* as top alternatives.[242] The Commission notes that many of the alternatives identified by market participants do not appear in the market share estimates provided by the Notifying Party.

(262) The Parties' products also differ in terms of their composition and galenic form. GSK's *Sinecod* contains the active ingredient *butamirate*, whereas Pfizer CH's *Robitussin* contains *dextromethorphan*. Robitussin is only available as a syrup, whereas *Sinecod* is available as a tablet, syrups or drops, of which syrups accounts for the lowest share of sales in Hungary (around [10-20]%).

(263) Furthermore, respondents to the market investigation did not raise specific or substantiated concerns in relation to antitussives in Hungary.

- ***OTC-to-OTC / OTC-to-Rx: Multi-symptom cold and flu products (R5A) and antitussives (R5D)***

(264) Tables 17 and 18 below presents the Parties' and their competitors' market shares (in value and volume) over the past three years) on the relevant OTC and OTC + Rx segments, combining both multi-symptom cold and flu products and antitussives.

241 Replies to Q1 - Questionnaire to pharmacies and retailers, question 45.1. Replies to Q3 – Questionnaire to competitors, question 63.

242 Replies to Q3 - Questionnaire to competitors, question 62.

Table 17 – Market share data (2016-2018) on the market for (OTC) multi-symptom cold and flu products and antitussives (OTC 3 – 01B1 + 01A1) in Hungary

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[40-50]%	[30-40]%
Pfizer CH	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	***[40-50]%***	***[30-40]%***	***[40-50]%***	***[30-40]%***	***[40-50]%***	***[30-40]%***
Bayer	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Perrigo	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Sanofi	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%
Boiron	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Coordwell Kft	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Pi-Pharma	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Schwabe	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Reckitt Benckiser	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Annex RFI#1 Q10.1_EEA ATC3 Groups 1-3 Share Tables, as Hungary S Cut 3

Table 18 – Market share data (2016-2018) on the market for (OTC +Rx) multi-symptom cold and flu products and antitussives (ATC 3 – R5A + R5D) in Hungary

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[50-60]%	[40-50]%	[50-60]%	[40-50]%	[50-60]%	[50-60]%
Pfizer CH	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	**[50-60]%**	**[50-60]%**	**[50-60]%**	**[50-60]%**	**[60-50]%**	**50-60]%**
Perrigo	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Sanofi	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Bayer	[5-10]%	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Procter & Gamble	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Extractum pharma	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Reckitt Benckiser	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Bausch health	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Teva	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Annex RFI#9 Q8a_Hungary_Cold_1_Flu_OTC_Rx

The Notifying Party's view

(265) The Notifying Party argues that the Transaction does not raise serious doubts for the following main reasons: (i) a number of strong competitors will remain on the

market post-Transaction; and (ii) the Parties do not compete closely since their products are either based on different formats and molecules or belong to different product categories.[243]

Commission's assessment

(266) In OTC multi-symptom cold and flu products, GSK offers its *NeoCitran* line of products, whereas Pfizer CH markets *Advil*-branded products. GSK does not offer OTC antitussives in Hungary but its *Sinecod* antitussives are sold under prescription. Pfizer CH generally offers its *Robitussin* antitussives OTC.[244]

(267) The Commission notes that the increment brought about by Pfizer CH is relatively limited, reaching around [5-10]% in value.

(268) The competitive analysis, either of the OTC-to-Rx or the OTC-to-OTC overlap does not materially differ compared to that of (OTC) multi-symptom cold and flu products and (Rx) antitussives, as laid out in paragraphs 251 to 258 above.

(269) GSK's multi-symptom products are not considered by respondents to the market investigation as an alternative to Pfizer's *Robitussin* antitussives. Indeed, none of the respondents list *NeoCitran* as a top alternative to *Robitussin*. Competing products cited include instead Novartis' *ACC*, Sanofi's *Rhinathiol Tusso*, and Aramis Pharma's *Fluimucil*.[245] Furthermore, the results of the market investigation revealed that, in Hungary, the competitive interaction between single symptom products, including antitussives, and multi-symptom products is limited. Customers are typically more likely to choose single-symptom products to treat symptoms such as cough and would rather use multi-symptom products in case of more complex illness.[246]

(270) As mentioned in paragraphs 253 and 255 with regard to multi-symptom cold and flu products specifically, *Advil Cold & Flu* is also not considered by most market players as a close competitor of GSK's *NeoCitran*. Similarly, as mentioned in paragraph 261, GSK's Rx antitussive *Sinecod* is not considered by most market players as a close competitor of Pfizer's OTC *Robitussin.*

(271) In addition, responding pharmacies/retailers indicate that patients who buy simultaneously cold and flu products tend to buy *NeoCitran* (but not Pfizer's *Advil*) alongside either *Coldrex* or *Rhinathiol*, but not together with Pfizer's *Robitussin* (or GSK's *Sinecod*).[247]

243 Form CO, Chapter 5, Section 7, paragraphs 92 to 97.

244 To the exception of Romania, as described in paragraph 293 of this Decision.

245 Replies to Q1 - Questionnaire to pharmacies and retailers, question 45.1.

246 Replies to Q3 - Questionnaire to competitors, question 54.1.

247 Replies to Q1 - Questionnaire to pharmacies and retailers, question 47.

- ***OTC-to-Rx: Multi-symptom cold and flu products (R5A) and topical nasal preparations (R1A7 + R1A9)***

(272) In multi-symptom cold and flu products GSK offers its *NeoCitran* line of products, whereas Pfizer CH markets *Advil*-branded products. In addition, GSK offers its *Otrivin* line of OTC topical nasal treatments in Hungary.

(273) Table 19 below presents the Parties' and their competitors' market shares (in value and volume) over the past three years.

Table 19 – Market share data (2016-2018) on the OTC+Rx market for multi-symptom cold and flu products and topical nasal preparations (ATC 3 – R5A+R1A7+R1A9) in Hungary

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[30-40]%	[20-30]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%
Pfizer CH	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	***[30-40]%***	***[20-30]%***	***[30-40]%***	***[30-40]%***	***[30-40]%***	***[30-40]%***
Sanofi	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[10-20]%
Merck	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Perrigo	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Bayer	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Polpharma	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
Procter & Gamble	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Gedeon Richter	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Teva	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Casella-Med Gmbh	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Krka	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Annex RFI#9 Q8a_Hungary_Cold_1_Flu_OTC_Rx

The Notifying Party's view

(274) The Notifying Party argues that the Transaction does not raise serious doubts for the following main reasons: (i) the Transaction results in moderate shares and a minimal increment; and (ii) a number of strong competitors will remain on the market post-Transaction.[248]

Commission's assessment

(275) The Commission notes that the increment brought about by the Transaction is minimal, as it is around [0-5]%. The impact of the Transaction on the competitive

248 Form CO, Chapter 5, Section 7, paragraphs 155 and 156.

structure of the relevant market is thus limited. The Commission also notes that the estimates provided in Table 19 come from IQVIA's MIDAS database, when looking at both Rx and OTC products. Based on the OTC-IMS database, which focuses on OTC products (where both Parties are active and which should thus be more accurate as the Parties' products are not sold Rx) the market would qualify as a Group 3, where the Parties' share would reach [30-40]% with an increment of [0-5]%.

(276) Furthermore, Pfizer CH is not active in the manufacturing and supply of topical nasal preparations. For responding pharmacies/retailers, patients who buy simultaneously cold and flu products tend to buy GSK's *NeoCitran* alongside non-Pfizer products including Perrigo's Coldrex or Sanofi's *Rhinathiol*, but would not typically purchase Pfizer's *Advil* with GSK's *Otrivin*.[249] In fact, no customer cited Pfizer CH products as a top alternative to GSK's *Otrivin*, listing instead Sanofi's *Rhinospray*, Merck's *Nasivin*, Gedeon Richter's *Xilomare* or Polfa *Novorin* as top alternatives.[250]

(277) As mentioned in paragraphs 253 and 255 *Advil Cold & Flu* is also not a close competitor of GSK's *NeoCitran* in multi-symptom products, where a number of strong competitors, including some that also offer topical nasal preparations are involved (including Sanofi, Procter & Gamble and Bayer). Looking at adult only markets does not materially impact the assessment, as the Parties' market share would decrease, based on available estimates. [251]

Conclusion

(278) In view of the elements discussed in this Section, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market for cold and flu treatments in Hungary.

Malta

(279) In Malta, at ATC 3 class level,[252] the Transaction gives rise to one Group 1 affected markets in relation to multi-symptom cold and flu products (R5A)[253].

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249 Replies to Q1 - Questionnaire to pharmacies and retailers, question 47.

250 Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question, question 33.1.1.

251 The Parties' activities do not overlap for paediatric products concerning multi-symptom cold and flu products and topical nasal preparations products (OTC 3 – 01B1) in Hungary.

252 The Parties are unable to provide market share data on combinations of ATC 3 classes. Pfizer also sells its *Robitussin* antitussives and expectorants in Malta (ATC 3 classes R5C and R5D respectively). The Parties believe that the share of *Robitussin* in expectorants or antitussives would be around [10-20]%. As a result, in light of the lack of overlap in antitussives and expectorants, the competitive assessment for any potential market including multi-symptom cold and flu products and expectorants and/or antitussives would likely largely follow the same logic as the assessment relating to multi-symptom cold and flu products only. In particular, no GSK product is listed as a top alternative to Pfizer's antitussives or expectorants. See Replies to Q1 - Questionnaire to pharmacies and retailers, questions 45.1 and 46.1. For these reasons, combinations of ATC 3 markets for Malta will not be further discussed in this Decision.

(280) None of the Parties are active directly in Malta. However, both offer their products via one designated distributor each. GSK offers its *Day & Night Nurse*, *Beechams*, *Panadol*, and *Actifed* line of multi-symptom cold and flu products, whereas Pfizer CH offers *Advil Cold & Flu*.

(281) Table 20 below presents the Parties' and their competitors' market shares estimates (in value and volume) over the past three years.

Table 20 – Market share data (2016-2018) on the market for (OTC) multi-symptom cold and flu products (ATC 3 – R5A) in Malta

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[40-50]%	N/A	[50-60]%	N/A	[50-60]%	N/A
Pfizer CH	[10-20]%	N/A	[10-20]%	N/A	[10-20]%	N/A
Combined	***[50-60]%***	N/A	***[60-70]%***	N/A	***[60-70]%***	N/A
Reckitt Benckiser	[10-20]%	N/A	[10-20]%	N/A	[10-20]%	N/A
Medochemie	[10-20]%	N/A	[10-20]%	N/A	[10-20]%	N/A
Krka	[0-5]%	N/A	[0-5]%	N/A	[0-5]%	N/A
Alliance Pharma	[5-10]%	N/A	[0-5]%	N/A	[0-5]%	N/A
Neofarma pharmaceuticals	[0-5]%	N/A	[0-5]%	N/A	[0-5]%	N/A
Mcneil products	[0-5]%	N/A	[0-5]%	N/A	[0-5]%	N/A
Others	[0-5]%	N/A	[0-5]%	N/A	[0-5]%	N/A
Total	*100,0%*	N/A	*100,0%*	N/A	*100,0%*	N/A

Source: Table CF 11 of Form CO

The Notifying Party's view

(282) The Notifying Party argues that the Transaction does not raise serious doubts for the following main reasons: (i) GSK withdrew its *Nurse* and *Beechams* products from the market; (ii) Brexit will likely lead to new marketing authorisations (and thus entry) in Malta (iii) a number of strong competitors remain on the market post-Transaction and are well positioned to expand their sales; and (iii) distributors in Malta hold significant buyer power. [254]

(283) The Notifying Party also indicates that the market share estimates provided above may not be relied upon for precise market share estimates due to the methodology used.[255]

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253 The IQVIA OTC database does not include market share data for Malta. The Notifying Party therefore relied on Misco Malta data. This database refers to "ATC 3" classes (rather than OTC 3 classes) although the products included in the market share should only cover OTC products.

254 Form CO, Chapter 5, Section 7, paragraphs 122 to 127.

255 Form CO, Chapter 5, Section 7, paragraph 119. The data provider, Misco Malta, does not generally track such market data, but provided estimates at the specific request of GSK. The data is based on a survey of 30 pharmacies (representing [10-20]% of the Maltese market) conducted

Commission's assessment

(284) The market investigation appears to validate the Notifying Party's argument that the market share estimates provided to the Commission may overestimate the Parties' share.[256] Competing players in the market also have limited visibility on the competitive landscape. No competitor was able to provide a list of the top players in the markets for cold and flu treatments in Malta.[257] Most competitors whose products are offered in Malta are only present locally via independent distributors, like GSK and Pfizer CH.

(285) The Commission considers that the Notifying Party's argument regarding the withdrawal of GSK products from the market is not relevant as it does not materially impact the competitive assessment. *Nurse* and *Beechams* only account for a minor share of GSK's sales in Malta. Its main brands are instead *Panadol*, and to a lesser extent *Actifed*. Combined, sales of *Nurse* and *Beechams* in 2018 represent about a third of the sales of *Panadol*. Furthermore, in Malta, *Nurse* and *Beechams* are not typically considered as must-have products. Conversely, the Parties' other products (more specifically GSK's *Panadol* and, to a lesser extent, Pfizer's *Advil*) are considered as must-have brands for multi-symptom treatments. However, the market investigation firmly indicates that other products are also considered must-haves in Malta, including in particular Reckitt Benckiser's *Nurofen*, consistently cited by responding pharmacies/retailers, as well Medochemie's *SNIP* to a lesser extent.

(286) The Parties' products also do not appear to be each other's closest competitor; Reckitt Benckiser's *Nurofen* is consistently listed by pharmacies/retailers as the most suitable alternatives to *Advil Cold & Flu*, followed by Sanofi's *Rhinathiol* in most instances, while only one respondent cited *Panadol* as a second-best alternative to *Advil*.[258] Similarly, pharmacies/retailers cite Reckitt Benckiser's *Nurofen*, Sanofi's *Rhinathiol*, Medochemie's *SNIP*, as well as McNeil's *Benylin*, as top alternatives to Panadol. Reckitt Benckiser's *Lemsip*, Medochemie's *SNIP* and Alliance Pharma's *Uniflu* are listed as the closer alternatives to *Beechams*, while *SNIP* and *Uniflu* are also listed as top alternatives to GSK's *Nurse*. Only one respondent cited *Advil* as a second-best alternative to *Panadol*.[259] The Commission notes that Sanofi's *Rhinathiol* is not listed among the products competing in the category in the estimates provided by the Parties, which further indicates that the estimates provided above may overestimate the Parties' presence on the market in Malta.

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between 2014 and 2018. The methodology leads to important discrepancies. For instance, while actual sales data indicates that Pfizer's *Advil Cold* generated [40-50]% less sales than GSK's *Nurses*, the estimates attribute a [90-100]% % higher share to *Advil Cold* than *Nurses*.

256 The market shares of the Parties are likely overestimated as a number of products that are not originating from the competitors listed in the market data (e.g. Sanofi) were mentioned as competing products over the course of the market investigation.

257 Replies to Q3 - Questionnaire to competitors, questions 59 to 63.

258 Replies to Q1 - Questionnaire to pharmacies and retailers, question 44.1.

259 Replies to Q1 - Questionnaire to pharmacies and retailers, question 44.2.

(287) In addition, other players, including Stada and Procter & Gamble hold marketing authorisations for OTC multi-symptom cold and flu products in Malta, namely for their *Covonia* and *Vicks* products. These players, while not listed in the market share estimates provided by the Notifying Party potentially generated sales in Malta, or at least represent potential competitors to the Parties.

(288) Furthermore, wholesalers appear to be the gatekeepers to pharmacies in Malta as pharmacies do not deal directly with suppliers. According to the market investigation, wholesalers have a clear influence on the OTC products and brands procured by the pharmacies they supply.[260] This specific situation can likely be explained by the fact that, unlike in other Member States, pharmaceutical companies have no local presence in Malta, as confirmed by all responding wholesalers. One states for instance that "*[i]n a minutely small country like Malta, it is in no way possible for pharmaceutical companies to actually sell products themselves in a viable fashion . This would be the equivalent of them having a fully fledged setup for a medium size town in the mainland EU. In order to keep pricing to patients and consumers down this is carried out through distributors*". Another wholesaler states that "*[p]harmaceutical companies do not sell directly to pharmacies in Malta*".[261] The market investigation also indicates that while pharmaceutical companies may grant exclusivity towards wholesalers for the distribution of their products, these are typically one-sided, as wholesalers generally offer products from multiple suppliers and brands, and may even distribute consumer goods and other products in addition to pharmaceuticals,[262] making them critical for players such as GSK, which also have a large consumer health (including oral health) business.

(289) One responding Maltese wholesaler expressed concerns about the position of the Parties post-Transaction, which would allegedly give them a more important influence on pricing, and its impact on potential entry. However, that claim is not substantiated and is contradicted by another responding wholesaler which states that "*there are so many products on the market in Malta that higher pricing could drive consumers to purchase a different product and therefore sales would ultimately decrease*",[263] as well as the overwhelming majority of pharmacies/retailers, which expect that the Transaction will have no impact or a positive impact on prices and product choice.[264] The claim is also contradicted by the results of the market investigation which indicate that parallel imports of multiple suppliers' products are widespread, implying that the competitive landscape in Malta depends on other factors than suppliers' direct sales in the country. One wholesaler explains for instance that "*there are parallel traded products available of all products that sell decently here and from different sources. In some case parallel traders will put products on the market that we do not even have*".[265] As a result, there are many channels through which products

260 Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question 11.

261 Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question 5.

262 Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question 4.1.

263 Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question 24.1.1.

264 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 54.1 to 54.3.

265 Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question 24.1.1.

are ultimately offered to final consumers, in addition to approved local distributors, and the Transaction is unlikely to have any direct impact on these channels.

(290) The competitive dynamics would not change materially when assessing markets based on adult-only products. Medochemie's *SNIP* and GSK's *Actifed* are both at least partially paediatric products, and removing those would lead to a more limited increment in the Parties' share based on the above estimates. [266]

(291) In view of the elements discussed in this Section, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market for cold and flu treatments in Malta.

Romania

(292) In Romania, at ATC 3 class level (or combinations thereof), the Transaction gives rise to Group 1 affected markets in relation to (i) Rx antitussives (R5D);[267] (ii) Rx and OTC multi-symptom cold and flu products and antitussives (R5A + R5D); (iii) Rx and OTC multi-symptom cold and flu products, antitussives, and expectorants (R5A + R5C + R5D); and (iv) one Group 2 affected market in relation to OTC multi-symptom products and expectorants (R5A + R5C).[268]

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266 The Parties' activities do not overlap for paediatrics products regarding multi-symptom cold and flu products (ATC 3 – R5A) in Malta.

267 Other Group 1 affected markets technically arise when looking at Rx-to-Rx overlaps, as a result of the Parties' presence in antitussives (for instance with regards to (i) antitussives and expectorants, as well as (ii) multi-symptom products, antitussives and expectorants). However, as there are no Rx multi-symptom cold and flu products sold in Romania, and as the Parties do not offer any Rx expectorants, the assessment of such markets would not bring any additional element compared to the Rx-to-Rx assessment at ATC 3 level or OTC-to-Rx overlaps.

268 In Romania, Group 3 markets arise (i) for Rx Antitussives/Expectorants (R5D+R5C), (ii) for OTC Combined Multi-symptom Cold and Flu (R5A), Expectorants (R5C) and Antitussives (R5D), and (iii) for Rx Combined Multi-symptom Cold and Flu (R5A), Expectorants (R5C) and Antitussives (R5D). Regarding the Rx Antitussives/Expectorants (R5D+R5C) market, the Parties' combined market shares reached [20-30]%, [20-30]%, and [30-40]% by value, in 2016, 2017, and 2018 respectively. Pfizer CH's increment amounted to [10-20]%, [10-20]%, and [10-20]% by value, in 2016, 2017, and 2018 respectively. There will remain strong competitors post-Transaction, such as Zambon Group, with market shares of [10-20]%, [20-30]% and [20-30]% by value for the years 2016, 2017 and 2018 respectively; and Angelini, with market shares of [10-20]%, [20-30]% and [20-30]% by value for the years 2016, 2017 and 2018 respectively. Regarding the OTC Combined Multi-symptom Cold and Flu (R5A), Expectorants (R5C) and Antitussives (R5D) market, the Parties' combined market shares reached [20-30]%, [20-30]%, and [20-30]% by value, in 2016, 2017, and 2018 respectively. Pfizer CH's increment amounted to [0-5]%, [0-5]%, and [0-5]% by value, in 2016, 2017, and 2018 respectively. Moreover, there will remain strong competitors post-Transaction, such as Reckitt Benckiser, with market shares of [10-20]%, [10-20]% and [10-20]% by value for the years 2016, 2017 and 2018 respectively; and Perrigo, with market shares of [5-10]%, [5-10]% and [5-10]% by value for the years 2016, 2017 and 2018 respectively. Regarding the Rx Combined Multi-symptom Cold and Flu (R5A), Expectorants (R5C) and Antitussives (R5D) market, the Parties' combined market shares reached [20-30]%, [20-30]%, and [30-40]% by value, in 2016, 2017, and 2018 respectively. Pfizer CH's increment amounted to [10-20]%, [10-20]%, and [10-20]% by value, in 2016, 2017, and 2018 respectively. Moreover, there will remain strong competitors post-Transaction, such as Zambon Group, with market shares of [10-20]%, [20-30]% and [20-30]% by value for the years 2016, 2017 and 2018 respectively; and Angelini, with market shares of [10-20]%, [20-30]% and [20-30]% by value for the years 2016,

- ***Rx-to-Rx / OTC-to-Rx:* Antitussives (R5D)**

(293) GSK offers Rx antitussives in Romania under the *Tussin Forte* brand, while Pfizer CH offers Rx antitussives under its *Robitussin* brand on the same market. The Commission notes that Pfizer CH's *Robitussin* is marketed in Romania as Rx products; this represents an exception in the EEA as Pfizer CH markets these products as OTC products in the other EEA Member States (including in Czechia, Slovakia, and Hungary). In addition, GSK also offers its *Sinecod* OTC in Romania.

(294) Table 21 below presents the Parties' and their competitors' market shares (in value and volume) over the past three years) on the Rx segment.

Table 21 – Market share data (2016-2018) on the market for Rx antitussives (ATC 3 – R5D)[269] in Romania

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
Pfizer CH	[30-40]%	[20-30]%	[40-50]%	[30-40]%	[40-50]%	[30-40]%
GSK	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[40-50]%	[40-50]%
Combined	***[70-80]%***	***[60-70]%***	***[80-90]%***	***[70-80]%***	***[80-90]%***	***[70-80]%***
Alvogen	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%
Biofarm (romania)	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[0-5]%	[5-10]%
Ropharma	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Bio eel srl	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Urgo	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Table CF 12 of Form CO and Annex CF 21

(295) Table 22 below presents the Parties' and their competitors' market shares (in value and volume) over the past three years on an OTC + Rx segment.

2017 and 2018 respectively. Considering the above and the remained of this Section (IV.3.2.3 regarding Romania), it is unlikely that any competition concerns can arise as a result of the Transaction in the markets for Rx Antitussives/Expectorants (R5D+R5C), for OTC Combined Multi-symptom Cold and Flu (R5A), Expectorants (R5C) and Antitussives (R5D), and for Rx Combined Multi-symptom Cold and Flu (R5A), Expectorants (R5C) and Antitussives (R5D) in Romania.

269 The market shares and competitive assessment would remain identical at ATC 4 level for plain antitussives (R5D1), as all listed products sold Rx are plain antitussives.

Table 22 – Market share data (2016-2018) on the market for OTC + Rx antitussives (ATC 3 – R5D) in Romania

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[10-20]%	[20-30]%
Pfizer CH	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Combined	***[30-40]%***	***[30-40]%***	***[30-40]%***	***[30-40]%***	***[30-40]%***	***[40-50]%***
Boiron	[40-50]%	[30-40]%	[40-50]%	[30-40]%	[40-50]%	[30-40]%
Ipsen	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[10-20]%
Alvogen	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
Biofarm (Romania)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Urgo	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Annex CF 21 of Form CO

The Notifying Party's view

(296) The Notifying Party argues that the Transaction does not raise serious doubts for the following main reasons: (i) there are stringent price controls mechanisms applying to Rx products in Romania; (ii) a number of strong competitors will remain on the market post-Transaction; and (iii) the Parties do not compete closely since a large share of sales from Pfizer come from paediatric products.[270]

Commission's assessment

(297) While the combined market shares of the Parties are high on an Rx-only market, the Commission observes that over two third of Pfizer's sales of prescription antitussives in Romania come from the sales of *Robitussin Junior*, which is designed for use by children. GSK does not offer antitussives targeting children in Romania and there is thus no overlap in that respect. As mentioned in Section IV.3.2.1, the market investigation indicates that paediatric and adult products form part of distinct product markets. Looking at adult antitussives only, Pfizer's market share would drop below [20-30]% (in value, as well as in volume).

(298) Furthermore, the market investigation indicates that the line between Rx and OTC products is particularly blurred in Romania, largely due to the national regulatory framework, which mitigates the relevance of an Rx only antitussives market. At Rx + OTC level, antitussives in Romania are only a Group 3 market, as evidenced in Table 22. Regardless of the exact market definition, feedback received from the market investigation indicates that OTC products exercise a strong competitive constraint on Rx products. The market investigation highlights the specificity of the regulatory process in Romania, including the very low prices and long registration process for Rx products, the possibility to register one brand only as Rx or OTC, as well as the fact that doctors can and do prescribe OTC

270 Form CO, Chapter 5, Section 7, paragraphs 131 to 135.

antitussives (in addition to Rx products), which altogether contribute to blur the distinction between OTC and Rx products.[271]

(299) With regards to Rx products specifically, respondents to the market investigation also largely confirm the Notifying Party's argument in relation to the impact of the regulatory process on Rx prices in Romania. The results of the market investigation confirmed it is very difficult for an Rx supplier to change supply conditions of its products (in particular by raising prices),[272] and express no concern that the Combined CH Business would be able to do so post Transaction.[273]

(300) In addition, the market investigation indicated that a significant number of players would remain on the antitussive markets post Transaction. Competitors to the Parties' antitussives include Boiron's *Stodal*, Ascendis' *Tusend*, Engelhard's *Prospan*, KRKA's *Herbion Iedera*, Ipsen's *Paxeladine*, and Himalaya's *Koflet*. These include natural or homeopathic remedies that are not listed in the market share estimates provided by the parties.

(301) Furthermore, regardless of market definition, the Parties' products do not appear as particularly close competitors. Firstly, respondents mention that even in the Rx space, the products are not each other's closest competitor, in particular because they are not in the same format. For instance, *Tussin Forte* is available in tablet format, while *Robitussin* is offered as a syrup.[274] Secondly, most respondents do not mention GSK as a top alternative to Pfizer's cough products (or conversely) in Romania overall. No respondent mentioned *Tussin Forte* as a top competitor to *Robitussin*. Only one customer and a very small minority of competitors lists GSK's *Sinecod* (OTC) as a second or third alternative to Pfizer's Robitussin (Rx). Respondents instead consider Boiron's *Stodal*, Ascendis' *Tusend*, Engelhard's *Prospan*, KRKA's *Herbion Iedera*, Ipsen's *Paxeladine*, Biofarm's *Rofedex*[275] or Novartis' *ACC* as top alternatives to Pfizer's Robitussin.[276] Similarly, no customer and only a very small minority of competitors mentioned *Robitussin* as a second or third alternative to GSK's antitussives. The main alternatives to GSK products include also Boiron's *Stodal*, Novartis' *ACC*, Engelhard's *Prospan*

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271 Replies to Q3 - Questionnaire to competitors, question 65. Follow-up replies of Romanian respondents to Q1 and Q2.

272 The results of the market investigation confirmed that it is only in limited circumstances that the Romanian public authority would allow prices of Rx products to increase, in particular to adjust to exchange rate fluctuations or increased prices in a panel of other European Union Member States.

273 Follow-up replies of Romanian respondents to Q1 and Q2.

274 Follow-up replies of Romanian respondents to Q1 and Q2. If a patient has a prescription for a specific product from a doctor, the pharmacy can recommend a different product only if it has the same format (among others) as the prescribed product.

275 In the Rx space specifically, some respondents mention that *Rofedex* is the only direct competitor to *Tussin Forte*, as it is based on the same (tablet) format and concentration as *Tussin Forte*. Follow-up replies of Romanian respondents to Q1 and Q2.

276 Replies to Q1 - Questionnaire to pharmacies and retailers, question 45.1. Replies to Q3 - Questionnaire to competitors, question 63. Follow-up replies of Romanian respondents to Q1 and Q2.

KRKA's *Herbion Iedera*, Ipsen's *Paxeladine*, as well as Urgo's *Humex*, and Himalaya's *Koflet.*[277]

(302) The Parties' products are also typically not considered as must-haves products by customers in Romania. In particular, none of the responding pharmacies/retailers consider any Pfizer product as must-have in Romania.[278] GSK's *Tussin Forte* (Rx) is not mentioned as a must-have for antitussives either, while only one respondent considers *Sinecod* (OTC) as a must-have.[279]

(303) A number of respondents also flagged that competition from generic players or pharmacy chain exert a constraint on branded player, and such competition may increase in the near future.[280]

(304) Finally, the overwhelming majority of respondents to the market investigation believe that the Transaction will have a neutral impact, in particular on prices, and no respondent raised specific or substantiated concerns in relation to the antitussives segment in Romania.[281]

- ***OTC-to-Rx:*** Multi-symptom cold and flu products (R5A) and antitussives (R5D)

(305) In Romania, the Transaction also gives rise to a Group 1 market in relation to multi-symptom cold and flu products and antitussives. GSK offers multi-symptom cold and flu products under its *Theraflu* and *Parasinus* brands (OTC), as well as its *Tussin Forte* (Rx) and *Sinecod* (OTC) antitussives whereas Pfizer CH markets its *Robitussin* antitussives (Rx).

(306) Table 23 below presents the Parties' and their competitors' market shares (in value and volume) over the past three years on an OTC + Rx segment.

Table 23 – Market share data (2016-2018) on the market for OTC + Rx multi-symptom cold & flu products and antitussives (ATC 3 – R5A + R5D) in Romania

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[30-40]%	[40-50]%	[30-40]%	[40-50]%	[30-40]%	[40-50]%
Pfizer CH	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	***[30-40]%***	***[40-50]%***	***[30-40]%***	***[40-50]%***	***[30-40]%***	***[40-50]%***

277 Replies to Q1 - Questionnaire to pharmacies and retailers, question 45.2. Replies to Q3 - Questionnaire to competitors, question 62.

278 Replies to Q1 - Questionnaire to pharmacies and retailers, question 52.

279 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 51 and 51.1.

280 Replies to Q3 - Questionnaire to competitors, question 64.1.

281 Replies to Q1 – Questionnaire to pharmacies and retailers, questions 68 to 71; Replies to Q2 – Questionnaire to wholesalers and buying groups, question 36 and Replies to Q3 – Questionnaire to competitors, question 54.

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
Reckitt Benckiser	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%
Perrigo	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[5-10]%
Boiron	[10-20]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
Bristol-Myers Sqb.	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Sun Pharma	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Solacium pharma	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%
Teva	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Sanofi	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Ipsen	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Urgo	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Confidential Annex RFI#9 – Question 8

The Notifying Party's view

(307) The Notifying Party argues that the Transaction does not raise serious doubts for the following main reasons: (i) the increment brought about by the Transaction is minimal; (ii) the Parties do not compete closely since they largely offer products belonging to different ATC classes.

Commission's assessment

(308) On this market, the increment brought about by Pfizer CH, which comes from its prescription antitussives *Robitussin*, is minor ([0-5]% in value).

(309) Multi-symptom cold and flu products account for an overwhelming share (around 95%) of a potential market including both such products and antitussives. As such, Pfizer's strong position on an Rx-only segment for antitussives in Romania does not translate into a strong position on markets based on ATC 3 combinations including multi-symptom cold and flu products. There is no element that would indicate that Pfizer's limited market share would underestimate the competitive constraint the company exerts in the cold and flu area in Romania.

(310) Pfizer has no presence in multi-symptom cold and flu treatments, and thus the direct competitive interaction with GSK is primarily focused on antitussives, which has been assessed in paragraphs 293ff above.

(311) The results of the market investigation confirmed that the Parties' products which belong to different ATC 3 classes are not particularly close competitors. None of the responding pharmacies/retailers or competitors, consider GSK's multi-symptom products as a top alternative to Pfizer's antitussives and conversely. As previous explained, respondents instead consider Boiron's *Stodal*, Ascendis'

Tusend, Engelhard's *Prospan*, KRKA's *Herbion Iedera*, Ipsen's *Paxeladine*, Biofarm's *Rofedex*[282] or Novartis' *ACC*, and to a limited extent GSK's *Sinecod* as alternatives to Pfizer's Robitussin.[283] Similarly, no respondent considered *Robitussin* as a top alternative to GSK's multi-symptom products. The main products competing with *Parasinus* and/or *Theraflu* cited by customers include mainly Reckitt Benckiser's *Nurofen*, as well as Perrigo's *Coldrex*, UPSA's *Humagrip* and *Fervex*, Sanofi's *Antinevralgic Sinus*, Teva's *Tedolfen*, and Boiron's *Oscillococcinum*, and others.[284] In particular, Nurofen, Coldrex and Fervex are frequently listed as must-have products by Romanian pharmacies/retailers.[285]

(312) Some market respondents raise the possibility that the Transaction may have an impact on competition in the cold and flu markets in general, including on prices, in particular by an increased bargaining power and additional investments in marketing activities, as well as the ability of the Combined CH Business to grow the *Advil* brand, which would be priced at a premium compared to GSK's products.[286] However, the Commission notes that as *Advil* is not currently present on the Romanian market, such introduction would likely increase competition in multi-symptom cold and flu products (R5A) and markets including such products in combinations with others.

- ***OTC-to-Rx:*** Multi-symptom cold and flu products (R5A), antitussives (R5C) and expectorants (R5C)

(313) In Romania, the Transaction also gives rise to a Group 1 market in relation to multi-symptom cold and flu products, expectorants and antitussives. As mentioned, GSK offers multi-symptom cold and flu products under its *Theraflu* and *Parasinus* brands (OTC), as well as its *Tussin Forte* (Rx) and *Sinecod* (OTC) whereas Pfizer CH markets its *Robitussin* antitussives (Rx), as well as *Robitussin Expecto* (OTC) line of expectorants. GSK does not offer expectorants in Romania.

(314) Table 24 below presents the Parties' and their competitors' market shares (in value and volume) over the past three years) on an OTC + Rx segment.

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282 In the Rx space specifically, some respondents mention that *Rofedex* is the only direct competitor to *Tussin Forte*, as it is based on the same (tablet) format and concentration as *Tussin Forte*. See follow-up replies of Romanian respondents to Q1 and Q2.

283 Replies to Q1 - Questionnaire to pharmacies and retailers, question 45.1. Replies to Q3 - Questionnaire to competitors, question 63. Follow-up replies of Romanian respondents to Q1 and Q2.

284 Replies to Q1 - Questionnaire to pharmacies and retailers, question 46.2. Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question 33.1.1. Replies to Q3 - Questionnaire to competitors, question 61.

285 Replies to Q1 - Questionnaire to pharmacies and retailers, question 53.1.

286 Replies to Q3 - Questionnaire to competitors, question 69.1.

Table 24 – Market share data (2016-2018) on the market for OTC + Rx multi-symptom cold & flu products, expectorants, and antitussives (ATC 3 – R5A + R5C + R5D) in Romania

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[20-30]%	[30-40]%	[20-30]%	[30-40]%	[20-30]%	[30-40]%
Pfizer CH	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	**[20-30]%**	**[30-40]%**	**[20-30]%**	**[30-40]%**	**[20-30]%**	**[30-40]%**
Reckitt Benckiser	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Perrigo	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[5-10]%
Boiron	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
Novartis	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[0-5]%
Bristol-Myers Sqb.	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Bionorican Arzneimi	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Alvogen	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Sanofi	[0-5]%	[0-5]%	[0-5]%	5,4%	[0-5]%	[0-5]%
Sun Pharma	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Solacium pharma	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Zambon Group	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Teva	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Engelhard	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Urgo	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Confidential Annex RFI#9 – Question 8

The Notifying Party's view

(315) The Notifying Party argues that the Transaction does not raise serious doubts for the following main reasons: (i) the increment brought about by the Transaction is minimal; (ii) the Parties do not compete closely since they offer products belonging to different ATC classes (with the exception of antitussives).

Commission's assessment

(316) The Commission notes that the increment brought about by Pfizer in this space is limited, as it is around [0-5]% by value, and mostly results from its sales of prescription antitussives.

(317) As explained above,[287] numerous viable competitors remain, both at ATC 3 level and in the combination of multi-symptom products and expectorants, including in particular Sanofi, Novartis, and Teva.

(318) Furthermore, none of the responding pharmacies/retailers or competitors, consider GSK's multi-symptom products as a top alternative to Pfizer's expectorants and conversely. Only one wholesaler consider GSK's *Theraflu* as an alternative to Pfizer's expectorant. Alternatives to *Robitussin* cited by customers include mainly Engelhard's *Prospan*, KRKA's *Herbion Ivy*, Novartis' *ACC*, Sanofi's *Mucosolvan* and Bionorica's *Sinupret*.[288]

- ***OTC-to-OTC:* Multi-symptom cold and flu products (R5A) and expectorants (R5C)**

(319) In Romania, the Transaction also gives rise to a Group 2 market in relation to multi-symptom cold and flu products and expectorants. Table 25 below presents the Parties' and their competitors' market shares (in value and volume) over the past three years).

(320) As mentioned, GSK offers OTC multi-symptom cold and flu products under its *Theraflu* and *Parasinus* brands, whereas Pfizer CH markets *Robitussin Expecto* expectorants OTC.

Table 25 – Market share data (2016-2018) on the market for Multi-symptom cold and flu products and expectorants (OTC 3 – 01B1+01A2) in Romania

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[20-30]%	[30-40]%	[20-30]%	[30-40]%	[20-30]%	[30-40]%
Pfizer CH	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	**[20-30]%**	**[30-40]%**	**[20-30]%**	**[30-40]%**	**[20-30]%**	**[30-40]%**
Reckitt Benckiser	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Perrigo	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Novartis	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Boiron	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%
Bristol-Myers Sqb.	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Solacium Pharma	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%
Sun Pharma	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Sanofi	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Teva	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

287 See paragraph 311 of this Decision.

288 Replies to Q1 - Questionnaire to pharmacies and retailers, question 46.1. Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, questions 31 and 32. Replies to Q3 - Questionnaire to competitors, question 63.

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
Engelhard	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Bionorica Arzneimi	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Biofarm (Romania)	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Urgo	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Krka	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Fiterman Pharma	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
Total	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%

Source: Table CF 21 of Form CO and Annex MS 2 – Romania to Form CO

The Notifying Party's view

(321) The Notifying Party argues that the Transaction does not raise serious doubts for the following main reasons: (i) the increment brought about by the Transaction is minimal; (ii) the Parties do not compete closely since they offer products belonging to different ATC classes.[289]

Commission's assessment

(322) The Commission notes that the increment brought about by Pfizer in this space, from its sales of *Robitussin Expecto* expectorants is marginal, as it is around [0-5]% by value in 2018.

(323) Furthermore, as explained in paragraphs 311 above, numerous viable competitors remain, both at ATC 3 level and in the combination of multi-symptom products and expectorants, including in particular Sanofi, Novartis, and Teva.

(324) In addition, the Parties' products are not particularly close competitors. There is no overlap between the Parties with regards to either multi-symptom cold and flu products, or expectorants. The market investigation, as summarized in paragraphs 228-232 above, clearly indicates that products belonging to different ATC 3 category are rarely a top alternative to each other.

Conclusion

(325) In view of the elements discussed in this Section, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market for cold and flu treatments in Romania.

289 Form CO, Chapter 5, Section 7, paragraphs 170 to 171.

Slovakia

(326) In Slovakia, a Group 1 market only arises for plain antitussives at ATC 4 level (R5D1).[290] Table 26 below presents the Parties' and their competitors' market shares (in value and volume) over the past three years.

Table 26 – Market share data (2016-2018) on the market for plain antitussives (ATC 4 – R5D1) in Slovakia

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%
Pfizer CH	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%
Combined	**[40-50]%**	**[40-50]%**	**[40-50]%**	**[40-50]%**	**[40-50]%**	**[30-40]%**
Teva	[20-30]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Ipsen	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Sanofi	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%
Dr.Max	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%
Stada	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Annex INT 16 – Form CO

The Notifying Party's view

(327) The Notifying Party argues that the Transaction does not raise serious doubts for the following main reasons: (i) the ATC 4 class is artificially narrow; (ii) a number of strong competitors will remain on the market post-Transaction; and (iii) the Parties' products are differentiated, in particular as they are based on different molecules.[291]

290 Group 3 markets arise in Slovakia for Multi-Symptom Cold & Flu Remedies (R5A) and for Multi-Symptom Cold & Flu/Antitussives (R5A+R5D). Regarding the Multi-Symptom Cold & Flu Remedies (R5A) market, the Parties' combined market shares reached [30-40]%, [30-40]%, and [30-40]% by value, in 2016, 2017, and 2018 respectively. Pfizer CH's increment amounted to [0-5]%, [0-5]%, and [0-5]% by value, in 2016, 2017, and 2018 respectively. Moreover, there will remain strong competitors post-Transaction, such as Sanofi, with market shares of [10-20]%, [20-30]% and [10-20]% by value for the years 2016, 2017 and 2018 respectively; and Perrigo, with market shares of [10-20]%, [10-20]% and [10-20]% by value for the years 2016, 2017 and 2018 respectively. Regarding the Multi-Symptom Cold & Flu/Antitussives (R5A+R5D) market, the Parties' combined market shares reached [20-30]%, [20-30]%, and [20-30]% by value, in 2016, 2017, and 2018 respectively. Pfizer CH's increment amounted to [0-5]%, [0-5]%, and [0-5]% by value, in 2016, 2017, and 2018 respectively. Moreover, there will remain strong competitors post-Transaction, such as Teva, with market shares of [10-20]%, [10-20]% and [10-20]% by value for the years 2016, 2017 and 2018 respectively; and Sanofi, with market shares of [10-20]%, [10-20]% and [10-20]% by value for the years 2016, 2017 and 2018 respectively. Considering the above, it is unlikely that any competition concerns can arise as a result of the Transaction in the markets for Multi-Symptom Cold & Flu Remedies (R5A), and for Multi-Symptom Cold & Flu/Antitussives (R5A+R5D) in Slovakia.

291 Form CO, Chapter 5, Section 7, paragraphs 81 to 89.

Commission's assessment

(328) The Commission notes that a relatively important share of Pfizer's sales ([5-10]% out of its total [10-20]% market share) come from the sales of Robitussin Junior, which is a paediatric treatment. Based on IQVIA, only Pfizer sells plain antitussives exclusively marketed towards children in Slovakia. There is thus no overlap in this respect with GSK. As mentioned in Section IV.3.2.1, the market investigation indicates that paediatric and adult products form part of distinct product markets. This is particularly true of Slovakian pharmacies/retailers, which all consider adult and paediatric products as belonging to different markets, in particular due to dosage differences.[292] Looking at adult plain antitussives only, the Parties' market share would drop to around [30-40]%.

(329) The market investigation indicates that the Parties' products are not particularly close competitors and that there are in any event alternatives to the Parties' products remaining on the market post Transaction. Teva's *Stoptussin* and Ditustat, Sanofi's *Mugotussol* and *Mucosolvan*, and Medochemie's *Dinarex* are mentioned by customers as a top alternative to both Robitussin and *Sinecod*.293 Competitors also list Teva's *Stoptussin* and *Ditustat*, Sanofi's *Mucosolvan*, as well as other products including IBSA's *Solmucol*, Ipsen' *Paxeladine*, Walmark's *Stopex*, and Angelini's *Levopront* as viable alternatives.[294] A number of the products considered as viable alternatives do not belong to the same ATC 4 category which mitigates the relevance of the ATC 4 category.

(330) Internal documents of the Parties also seem to mitigate the relevance of the ATC 4 category as they track competing products in both plain antitussives and combined antitussives jointly.[295]

(331) In addition, all of the responding Slovak pharmacies/retailers consider that multi-symptoms cold and flu treatments are interchangeable with products marketed for single symptoms and that patients use indistinctively a product marketed for multiple symptoms in order to cure a cough.[296] As a result, the Parties antitussive products also face some competitive constraint from multi-symptom products sold in Slovakia including Sanofi's *Paralen*, Perrigo's *Coldrex*, Reckitt Benckiser's *Nurofen*, Schwabe's *Kaloba*, Bayer's *Aspirin*, or Boiron's *Oscillocccinum*.

(332) Furthermore, the Parties' antitussives brands are nor particularly strong in Slovakia. Responding Slovak pharmacies/retailers do not consider GSK products, including *Sinecod*, to be must-haves, and only one mentioned *Robitussin* as a must-have product in Slovakia.[297]

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292 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 42.4 and 42.5.

293 Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, questions 32.1.1 and 33.1.1.

294 Replies to Q3 - Questionnaire to competitors, questions 62 and 63.

295 See the document [Internal document].

296 Replies to Q1 - Questionnaire to pharmacies and retailers, question 42.1.

297 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 51 and 52.

(333) Finally, respondents to the market investigation did not raise specific or substantiated concerns in relation to the cold and flu treatments segment in Slovakia.

(334) In view of the elements discussed in this Section, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market for antitussives in Slovakia.

United Kingdom

(335) In the United Kingdom, at ATC 3 class level, the Transaction gives rise to no overlap. Affected markets arise however in relation to combinations of ATC 3 classes in the cold and flu area including Group 1 markets in (i) OTC multi-symptom cold and flu treatments and expectorants (R5A + R5C), (ii) OTC multi-symptom cold and flu treatments and antitussives (R5A + R5D), (iii) OTC multi-symptom cold and flu products, expectorants, and antitussives (R5A + R5C + R5D).[298]

(336) GSK offers multi-symptom cold and flu products under its *Nurse* and *Beechams* brands, whereas Pfizer CH markets its *Robitussin* line of antitussives and expectorants.

(337) Tables 27, 28, and 29 below presents the Parties' and their competitors' market shares (in value and volume) over the past three years) in the various ATC 3 combinations giving rise to Group 1 affected markets.

298 Group 3 markets arise for OTC expectorants and antitussives (R5C + R5D), and for Cold or Flu Remedies/Nasal Decongestants/ Decongest Rubs/ Inhalants/Sore Throat Remedies/Nasal Saline Solutions/Expectorants/Cough Relievers (01B1+01B2+01B3+01C1+01F1+01A2+01A1) in the UK. Regarding the OTC expectorants and antitussives (R5C + R5D) market, the Parties' combined market shares reached [20-30]%, [20-30]%, and [20-30]% by value, in 2016, 2017, and 2018 respectively. GlaxoSmithKline's increment amounted to [0-5]%, [0-5]%, and [0-5]% by value, in 2016, 2017, and 2018 respectively. Moreover, there will remain strong competitors post-Transaction, such as Johnson & Johnson, with market shares of [20-30]%, [20-30]% and [20-30]% by value for the years 2016, 2017 and 2018 respectively; and Stada, with market shares of [10-20]%, [10-20]% and [10-20]% by value for the years 2016, 2017 and 2018 respectively. Regarding the Cold or Flu Remedies/Nasal Decongestants/ Decongest Rubs/ Inhalants/Sore Throat Remedies/Nasal Saline Solutions/Expectorants/Cough Relievers (01B1+01B2+01B3+01C1+01F1+01A2+01A1) market, the Parties' combined market shares reached [20-30]%, [30-40]%, and [30-40]% by value, in 2016, 2017, and 2018 respectively. Pfizer CH's increment amounted to [5-10]%, [5-10]%, and [5-10]% by value, in 2016, 2017, and 2018 respectively. Moreover, there will remain strong competitors post-Transaction, such as Johnson & Johnson, with market shares of [20-30]%, [20-30]% and [20-30]% by value for the years 2016, 2017 and 2018 respectively; and Reckitt Benckiser, with market shares of [10-20]%, [10-20]% and [10-20]% by value for the years 2016, 2017 and 2018 respectively. Considering the above, it is unlikely that any competition concerns can arise as a result of the Transaction in the markets for OTC expectorants and antitussives (R5C + R5D), and for Cold or Flu Remedies/Nasal Decongestants/ Decongest Rubs/ Inhalants/Sore Throat Remedies/Nasal Saline Solutions/Expectorants/Cough Relievers (01B1+01B2+01B3+01C1+01F1+01A2+01A1) in the UK.

Table 27 – Market share data (2016-2018) on the market for Multi-symptom Cold and Flu and Antitussives (ATC 3 – R5A+R5D) in the United Kingdom

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[40-50]%	[30-40]%	[50-60]%	[30-40]%	[50-60]%	[30-40]%
Pfizer CH	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	***[50-60]%***	***[30-40]%***	***[50-60]%***	***[30-40]%***	***[50-60]%***	***[40-50]%***
Reckitt Benckiser	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Johnson & Johnson	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Stada	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Perrigo	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Lofthouse	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%
Jackson	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[5-10]%	15,1%	[5-10]%	[10-20]%	[5-10]%	[10-20]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Table CF 8 of Form CO and Annex MS 2 – UK to Form CO

Table 28 – Market share data (2016-2018) on the market for Multi-symptom Cold and Flu and Expectorants (ATC 3 – R5A+R5C) in the United Kingdom

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[40-50]%	[40-50]%	[50-60]%	[40-50]%	[50-60]%	[40-50]%
Pfizer CH	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%
Combined	***[50-60]%***	***[50-60]%***	***[60-70]%***	***[50-60]%***	***[60-70]%***	***[50-60]%***
Johnson & Johnson	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Reckitt Benckiser	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Stada	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Perrigo	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Table CF 9 of Form CO and Annex MS 2 – UK to Form CO

Table 29 – Market share data (2016-2018) on the market for Multi-symptom Cold and Flu, Expectorants and Antitussives (ATC 3 – R5A+R5C+R5D) in the United Kingdom

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
GSK	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[40-50]%	[30-40]%
Pfizer CH	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Combined	***[40-50]%***	***[30-40]%***	***[50-60]%***	***[30-40]%***	***[50-60]%***	***[40-50]%***

Supplier	2016		2017		2018	
	Value	*Volume*	*Value*	*Volume*	*Value*	*Volume*
Johnson & Johnson	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Reckitt Benckiser	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Stada	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Perrigo	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Lofthouse	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%
Others	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%
Total	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*	*100,0%*

Source: Table CF 10 of Form CO and Annex MS 2 – United Kingdom

The Notifying Party's view

(338) The Notifying Party argues that the Transaction does not raise serious doubts for the following main reasons: (i) there is significant competition in the UK markets in particular from private label products which are not correctly assessed by IQVIA data; (ii) the Parties do not compete closely, in particular since they offer products belonging to different ATC classes.[299]

Commission's assessment

(339) All of these plausible markets may be assessed jointly, as the competitive dynamics are similar across ATC 3 combinations, considering the lack of overlap between the Parties at ATC 3 level.[300] The competitive dynamics do not change materially when assessing markets based on adult only products, where the Parties' market shares are essentially similar.[301]

(340) The market investigation largely validated the Notifying Party's main arguments, which mitigate the high level of market shares witnessed in the UK.

(341) Respondents to the market investigation confirmed that throughout the cold and flu area, there are many alternative to the Parties' product in each category, and that the Parties' products are not close competitors:

– In multi-symptom products, the main competitors to GSK's *Nurse* and *Beechams* cited by respondents to the market investigation include primarily Reckitt Benckiser's *Nurofen Cold & Flu* and *Lemsip*, and Johnson & Johnson's *Benylin* and *Sudafed*. Others include Aspar's *Hot Lemon*, as well as multi-symptom cold and flu products offered by Galpharm,

299 Form CO, Chapter 5, Section 7, paragraphs 101 to 109.

300 GSK holds a marketing authorisation for *Tixylix* in the UK, which is erroneously recorded by IQVIA under ATC Code R5D (instead of ATC 3 Code R5F, for which Pfizer is not present) according to the Notifying Party. This was confirmed during the market investigation, as *Tixylix* was not identified as a relevant product by any respondent.

301 The Parties' activities do not overlap for paediatric products regarding multi-symptom cold and flu, expectorants and antitussives (ATC 3 – R5A+R5C+R5D) in the United Kingdom.

Numark, Solpadeine, or Olbas.[302] No Pfizer product is mentioned by respondents as a top alternative in this category.

– In antitussives, the main competitors of Pfizer's *Robitussin* cited by respondents include primarily Johnson & Johnson's *Benylin* and *Actifed*, Reckitt Benckiser's *Lemsip*, and Stada's *Covonia*, Perrigo's *Buttercup* and *Bronchostop*.[303] No GSK product is mentioned by respondents as a top alternative in this category.

– In expectorants, the main competitors of Pfizer's *Robitussin* cited by respondents include Johnson & Johnson's *Benylin*, Reckitt Benckiser's *Lemsip*, Stada's *Covonia*, and Numark's *Chesty Cough*.[304] No GSK product is mentioned by respondents as a top alternative in this category.

(342) Furthermore, Pfizer is not a particularly strong player in the cold and flu area in general in the UK. While a majority of responding customers consider GSK offers must-have products, in particular *Nurse* and *Beechams*, in addition to nasal sprays,[305] an overwhelming majority consider that Pfizer products in the cold and flu space (i.e. *Robitussin*) are not must-haves.[306] Other competitors of the Parties, which are active in both multi-symptom cold products and cough treatments, have must-have brands in more than one product category. Such competitors include in particular Johnson & Johnson and Reckitt Benckiser.[307]

(343) The market investigation also confirms that private label products play a particularly preponderant role on the UK market. Over two third of responding pharmacy/retailers consider that these products are considered as substitutable to branded products by patients.[308] For each product category identified above, many respondents mention private label products as top alternatives to branded products, including the Parties'. An important share of these sales are not reflected in the IQVIA data provided. As a result the Parties' market shares as laid out in Tables 27, 28, and 29 are not a fully accurate reflection of the competitive dynamics of the market and are likely to be overestimated.

(344) Finally, respondents to the market investigation did not raise specific or substantiated concerns in relation to the cold and flu treatments segment in the United Kingdom.

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302 Replies to Q1 - Questionnaire to pharmacies and retailers, question 44.2. Replies to Q3 - Questionnaire to competitors, question 60.

303 Replies to Q1 - Questionnaire to pharmacies and retailers, question 45.1. Replies to Q3 - Questionnaire to competitors, question 63.

304 Replies to Q1 - Questionnaire to pharmacies and retailers, question 46.1. Replies to Q3 - Questionnaire to competitors, question 63.

305 Replies to Q1 - Questionnaire to pharmacies and retailers, question 51. Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, questions 33.2.

306 Replies to Q1 - Questionnaire to pharmacies and retailers, question 52. Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, questions 32.2.

307 Replies to Q1 - Questionnaire to pharmacies and retailers, question 53. Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, questions 34.1.

308 Replies to Q1 - Questionnaire to pharmacies and retailers, question 50.2.

(345) In light of the elements discussed in this Section, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market for cold and flu treatments in the United Kingdom.

3.3. Gastrointestinal treatments

3.3.1. Product market definition

(346) OTC gastrointestinal treatments include a variety of products typically used on a short-term or intermittent basis against reflux symptoms (e.g. heartburn and regurgitation), including antiacids, antiflatulents, and antiulcerants.

(347) GSK offers gastrointestinal treatments under the *ENO, Andrews Liver Salts*, and *Pantoloc Control* brands. Pfizer CH is active in particular with products sold under the brands *Nexium, Magnesia Bisurata, Simeco,* and *Aludrox*.

(348) In terms of ATC classification, gastrointestinal treatments relevant in the context of the Transaction are classified in the ATC class "A2 – Antacids, Antiflatulents, Antiulcerants". In terms of OTC classification, the relevant products are classified in OTC class 03. Table 30 below summarises the relevant sub-categories of gastrointestinal treatment ATC and OTC classes.

Table 30 – Gastrointestinal treatments – ATC/OTC Classes

<table>
<tr><th colspan="4">ATC Code</th><th colspan="2">OTC Code</th></tr>
<tr><td rowspan="7">A2</td><td colspan="3">Antacids, Antiflatulents, Antiulcerants</td><td colspan="2" rowspan="2">N/A</td></tr>
<tr><td rowspan="3">A2A</td><td colspan="2">Antacids, Antiflatulents, Carminatives</td></tr>
<tr><td>A2A1</td><td rowspan="2">Plain Antacids</td><td>03G1</td><td>Antacids</td></tr>
<tr><td>A2A2</td><td>Plain Antiflatulents</td><td>03G9</td><td>Oth Digest.T. & Stomach R</td></tr>
<tr><td rowspan="3">A2B</td><td colspan="2">Antiulcerants</td><td colspan="2">N/A</td></tr>
<tr><td>A2B1</td><td>H2 Antagonists</td><td>03G2</td><td>H2 Antagonists</td></tr>
<tr><td>A2B2</td><td>Acid Pump Inhibitors</td><td>03G3</td><td>Proton Pump Inhibitors</td></tr>
</table>

Source: Form CO – Table GI 2

Commission's precedents

(349) The Commission has assessed gastrointestinal treatments sold OTC at ATC 3 and ATC 4 level, both based on individual classes and combinations thereof.[309] In more recent cases, the Commission has assessed products in this area on the basis of a combination of ATC 3 classes including all antacids, antiflatulents and carminatives, and antiulcerants (ATC 3 classes A2A + A2B).[310] The Commission also assessed markets at ATC 4 level for plain antacids only (ATC 4 class A2A1),[311] and proton pump inhibitor or "PPI" (ATC 4 class A2B2).[312]

(350) The Commission has also considered whether a segmentation of gastrointestinal treatments (and in particular H2 Antagonists[313] or Proton Pump Inhibitors)[314] by molecule was warranted, but ultimately left the question open.[315]

The Notifying Party's view

(351) The Notifying Party argues that regardless of precise market definition, the different types of gastrointestinal treatment typically exert some degree of competitive pressure on one another.[316]

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309 See for example Commission decision of 4 August 2018 in case M.7919 – *Sanofi/Boehringer Ingelheim Consumer Healthcare Business*, paragraph 143 et seq.; Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline/ Novartis Vaccines Business (Excl. Influenza) / Novartis Consumer Health Business*, paragraph 333 and 334; Commission decision of 19November 2015 in case M.3544 – *Bayer Healthcare/Roche (OTC business)*, paragraph 16 and 18; Commission decision of 4 February 2009 in case M.5253 – *SanofiAventis/Zentiva*, paragraph 35; Commission decision of 29 June 2018 in case M.8889 – *Teva / PGT OTC Assets*, paragraph 89 and Commission decision of 25 October 2010 in case M.5953 – *Reckitt Benckiser/SSL*, paragraphs 38 to 43.

310 Commission decision of 4 August 2018 in case M.7919 – *Sanofi/Boehringer Ingelheim Consumer* Healthcare Business, paragraph 143.

311 Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline/ Novartis Vaccines Business (Excl. Influenza) / Novartis Consumer Health Business,* paragraph 336.

312 Commission decision of 29 June 2010 in case M.8889 – *Teva / PGT OTC*, paragraphs 85 to 87 and Commission decision of 29 July 2015 in case M.7645 *Mylan/Perrigo*, paragraph 50.

313 H2 antagonists function by blocking signals generated by histamine receptors on cells that are responsible for acid secretion, thus lowering the acidity of the stomach by preventing the acid's secretion into the stomach. The four common types of H2 antagonists (generally available OTC in lower doses and by prescription in higher doses) are (i) ranitidine, (ii) famotidine, (iii) cimetidine, and (iv) nizatidine. H2 antagonists are categorised in ATC 3 category A2B (ATC 4 category A2B1)7 and OTC category 03G2 – H2 antagonists.

314 Proton Pump Inhibitors ("PPIs") work by blocking (inhibiting) acid secretion in the stomach. Acid is pumped into the stomach by a specific enzyme (the hydrogen-potassium adenosine triphosphatase enzyme system or "proton pump"). The five most common types of PPIs are (i) *pantoprazole*, (ii) *omeprazole*, (iii) *lansoprazole*, (iv) *esomeprazole*, and (v) *raberprazole*. OTC PPIs are typically intended to be used for frequent symptoms of reflux/heartburn (but not for indigestion). According to the Notyfying Party, PPIs have been found to be more effective than H2 antagonists in many patients in reducing the production of stomach acids. PPIs are categorised in ATC 3 category A2B (ATC 4 category A2B2) and OTC category 03G3 - Proton pump inhibitors.

315 Commission decision of 29 June 2010 in case M.8889 – *Teva / PGT OTC*, paragraphs 85 to 87.

316 Form CO, Chapter 6, Section 6, paragraph 35.

Commission's assessment

(352) For the purposes of the present case, the exact market definition can be left open, as no serious doubts regarding the compatibility of the Transaction with the internal market arise under any plausible alternative market definition (namely, at ATC 3 level, ATC 4 level, combinations thereof, or molecule level).

3.3.2. Geographic market definition

(353) As explained in Section IV.1.2, the Commission considers the relevant product markets, as defined in Section IV.3.3.1, to be national in scope.

3.3.3. Competitive assessment

(354) Based on historical sales data, overlaps between the Parties' activities in gastrointestinal treatments arose, mostly in connection to GSK's *Pantoloc Control* product, an antiulcerant (and more specifically a PPI), under licence from Takeda. [Information on product license]. *Pantoloc Control* will not be sold anymore by GSK going forward, a fact confirmed by Takeda. Consequently, all affected markets arising as a result of GSK sales of *Pantoloc Control* are disregarded for the purposes of the present Decision.

(355) On a forward-looking basis, affected markets arise only in Ireland, and solely based on combination of ATC 3 or ATC 4 classes together, as the Parties' activities do not overlap at ATC 3 or 4 levels separately. Specifically, the Parties' activities give rise to affected markets in Ireland (in gastrointestinal treatments on a forward-looking basis) in combinations involving both PPIs (ATC 4 class A2B2, including Pfizer's *Nexium Control*) and plain antiacids (ATC 4 class A2A1, including GSK's *Andrews Liver Salts)*.[317] Such affected markets arise on the basis of the following potential markets (i) ATC 3 classes A2A + A2B; (ii) ATC 4 classes A2A1 + A2B1 + A2B2; and (iii) ATC 4 classes A2A1 + A2B2.

(356) The Commission notes that all these potential markets are Group 3 markets, which involve a minimal (around [0-5]%) increment due to GSK's limited sales of *Andrews liver Salt*. Furthermore, a number of other strong players, including Reckitt Benckiser, Johnson & Johnson, Bayer, Sanofi, Perrigo and Novartis will remain on these segments post-Transaction.

(357) No affected market arises on the basis of molecules as *Nexium Control* and *Andrews Liver Salts* are not based on the same active ingredients, as the former contains *esomeprazole* and the latter contains instead *sodium bicarbonate*, *citric acid* and *magnesium sulphate*.

317 According to the Notifying Party, a discrepancy arises between the classification of *Andrews Liver Salts* in the MIDAS and the OTC-IMS databases. In MIDAS, the product is classified as A2A1 (plain antacid) whereas in OTC-IMS, the product is classified as 03A9 (Other digestive treatments & stomach remedies) rather than as plain antacids (03G1), possibly due to the fact that *Andrews Liver Salts* is indicated as both an antacid and a laxative. Should *Andrews Liver Salts* be qualified as a laxative, no overlap with Pfizer CH would arise.

(358) No respondent to the market investigation raised concern with regards to the markets for OTC gastrointestinal treatments in Ireland.[318]

3.3.4. Conclusion

(359) In view of the elements discussed in this Section, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market for gastrointestinal treatments in the EEA.

3.4. Nutrition and digestive health

(360) The activities of the Parties within Nutrition and Digestive Health overlap in specific EEA Member States regarding (i) multivitamins and (ii) laxatives. Regarding multivitamins, the Parties' activities overlap in Slovakia and result in an affected market. Regarding laxatives, the Transaction does not give rise to affected markets in any EEA Member State under any plausible market definition.[319] For this reason, the remainder of this Section will exclusively deal with multivitamins.

3.4.1. Product market definition

(361) Multivitamins are dietary supplements containing multiple vitamins and minerals. They are generally purchased as a food supplement. The purpose of multivitamins is to ensure that patients receive all necessary vitamins if they do not obtain them through their diet or due to a medical condition.

(362) In multivitamins, GSK manufactures and offers products mainly under the *Cetebe* brand. Pfizer CH is active in particular with the brands *Centrum* and *Multi-tabs*.

(363) In terms of ATC classification, vitamins are classified in the ATC class "A11 – Vitamins". In terms of OTC classification, vitamins are classified in the OTC class 04. Table 31 below summarises the sub-categories of multivitamins ATC classes.

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318 Replies to Q1 - Questionnaire to pharmacies and retailers, question 55.1. Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, questions 38.

319 In laxatives, the only overlap between the Parties' products arises in Italy. In its decisional practice, the Commission has considered that "*all laxatives constitute one relevant market*" (see, e.g., M.7919 – *Sanofi/Boehringer Ingelheim*, paragraph 205) and in a recent case it concluded that "*the results of the market investigation do not indicate that the drugs for constipation should be defined by molecule or at the ATC4 level*" (M.7379 – *Mylan/Abbott EPD-DM*, paragraph 203), thus determining that the ATC 3 level is the appropriate product market. In turn, the Parties would have an approximate market share of [5-10]% for laxatives at the ATC 3 level in Italy. Evidence collected over the course of the market investigation also confirmed that GSK and Pfizer CH's products have different profiles and do compete with other types of laxatives in Italy (Minutes of a call with a wholesaler dated 16 April 2019).

Table 31 – Vitamins – ATC/OTC Classes

ATC Code				OTC Code			
A11	Vitamins			**04**	Vitamins, Minerals & Nutritional Supplements		
	A11A	Multivitamins with minerals			**04A**	Multivitamins with minerals	
		A11A1	Prenatal			**04A4**	Prenatal
		A11A2	Paediatric			**04A2**	Child
		A11A3	Geriatric			**04A3**	Seniors
		A11A4	Other multivitamins with minerals			**04A1**	Adult
	A11B	Multivitamins without minerals			**04B**	Multivitamins without mineral	
		A11B1	Prenatal			**04B4**	Prenatal
		A11B2	Paediatric			**04B2**	Child
		A11B3	Geriatric			**04B3**	Seniors
		A11B4	Other multivitamins with minerals			**04B1**	Adult

Source: Form CO – Table NDH 1

Commission's precedents

(364) The Commission has previously assessed multivitamins at ATC 3 and ATC 4 level, but also on the basis of OTC 2 and OTC 3 level, leaving open whether a sub-segmentation according to the target groups (prenatal, child, seniors or adult use), form of administration (capsules, powders, liquid) or sales channels (pharmacy or mass market) is needed.[320]

The Notifying Party's view

(365) The Notifying Party considers that multivitamins should be examined at the ATC 3 level.[321]

Commission's assessment

(366) For the purposes of the present case, the most plausible product markets in the multivitamins space consist of ATC 3 / OTC 3 classes, which can be further segmented based on ATC 4 / OTC 4 class (which take into account the product's target groups or form of administration). Hence the competitive assessment will focus on the effects of the Transaction on these segments.

320 See Commission decision of 19 December 2008 in case M.5295 – *Teva/Barr;* Commission decision of 9 June 2011 in case M.6162 – *Pfizer/Ferrosan Consumer Healthcare Business* and Commission decision of 4 August 2016 in case M.7919 – *Sanofi/Boehringer Ingelheim Consumer healthcare Business*.

321 Form CO, Chapter 7, Section 6, paragraph 24.

3.4.2. Geographic market definition

(367) As explained in Section IV.1.2, the Commission considers the relevant product markets, as defined in Section IV.3.4.1, to be national in scope.

3.4.3. Competitive assessment

(368) In Slovakia, at ATC 4 level, the Transaction gives rise to a Group 3 affected market in relation to adult multivitamins (ATC 4 - A11A4 / OTC 4 - 04A1), with a combined market share of the Parties of [20-30]% in value for 2018.322 GSK's sales of multivitamins are very low in Slovakia and the increment brought about by the Transaction is very small (around [0-5]%). Various strong competitors are active on this market segment, such as Walmark, Merck, Dr. Max, and many others.

(369) Respondents to the market investigation did not raise any concerns regarding the effect of the Transaction in the multivitamins category.

(370) One respondent raised concerns regarding the combination of *Cetebe* and *Centrum* that would allegedly lead the Parties to have a strong position on the vitamins market in Germany.[323] However, the Parties do not overlap at ATC 3 / ATC 4 level in Germany, as they are focused on the supply of different kind of vitamins; GSK offers mainly plain vitamin C and vitamin C combinations, whereas Pfizer CH offers multivitamins, as well as other supplements, including calcium and magnesium supplements.[324] Potential effects arising from the combinations of different products is assessed under Section IV.4 regarding conglomerate effects.

3.4.4. Conclusion

(371) In light of the elements discussed in this Section, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market for multivitamins in the EEA.

4. CONGLOMERATE EFFECTS

(372) Competitive concerns might not be limited to horizontal unilateral effects. Conglomerate effects stem from a concentration where the undertakings concerned are active on closely related markets (for example, as suppliers of complementary products or products that belong to the same product range). In case of a concentration giving rise to conglomerate effects, the Commission will assess the concentration in accordance to the framework set by the Non-Horizontal Merger Guidelines.[325] The market investigation in the present case aimed at understanding whether the combination of the Parties' product portfolios

322 Form CO, Chapter 7, Section 7, paragraph 40.

323 Replies to Q3 - Questionnaire to competitors, question 73.1.

324 Parties' reply to RFI 9 dated 21 June 2019.

325 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-Horizontal Merger Guidelines"), OJ C 265, 18.10.2008, paragraph 7.

could lead to competition concerns as a result of tying and bundling practices by the Combined CH Business, either in relation to a specific product category or across product categories.

Notifying Party's view

(373) The Notifying Party argues in particular that (i) the Transaction will not grant the Combined CH Business the ability to foreclose competitors *via* tying or bundling practices, in particular since Pfizer CH's products are not strongly complementary to GSK's, and because many rivals have wider OTC product portfolios than the Parties; and that (ii) the Combined CH Business will have no additional incentive to engage in bundling practices compared to GSK pre-Transaction due to the limited complementarity between the Parties' products. [326]

Commission's assessment

(374) The evidence gathered in the context of the market investigation supports the Notifying Party's claim that the Transaction would not increase the ability and incentive of the Combined CH Business to foreclose competitors through tying and bundling practices.

(375) Indeed, the results of the market investigation indicated that tying or bundling is not a common feature in the pharmaceutical OTC space, as a majority of competitors or wholesalers do not offer bundles to their customers.[327] Wholesalers and retailers also generally procure the specific products they need on an individual basis.[328]

(376) Market participants also noted that they would generally be able to turn to alternative suppliers (and products) in the OTC space besides the Combined CH Business, irrespective of the product category,[329] limiting the ability of the Combined CH Business to foreclose competitors through tying and bundling practices.[330]

(377) Some respondents raised non-specific concerns linked to the Combined CH Business' enlarged product range.[331] According to these respondents, such enlarged portfolio would in particular grant the Combined CH Business the ability to monopolise shelf space at retail level, by offering a full range of complementary OTC products. The market investigation, and in particular

326 Form CO, Chapter 2, Section 6, paragraph 30ff.

327 Replies to Q1 - Questionnaire to pharmacies and retailers, question 8; Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question 12.; Replies to Q3 - Questionnaire to competitors, question 8.

328 See Minutes of a call with a wholesaler dated 14 March 2019; Minutes of a call with a pharmacy chain dated 01 April 2019.

329 See Sections IV.3.1.3, IV.3.2 for alternatives in the Combined CH Business' main market segments.

330 Non-Horizontal Merger Guidelines, paragraph 99.

331 Replies to Q3 - Questionnaire to competitors, question 73.1. Minutes of a call with a competitor dated 14 March 2019.

responses by pharmacies and other retailers have firmly dismissed that possibility, as an overwhelming majority of respondents indicated that, across product categories, the Transaction will either have no impact on the shelf space for products of the Combined CH Business, or will even lead to less shelf space,[332] as pharmacies and retailer tend to offer products from different suppliers in every product category.

(378) Most of the concerns raised during the market investigation, in particular by a number of competitors, appear more likely to have the character of an efficiency, such as concerns relating to the Combined CH Business offering discounts over a wider portfolio of products or having an increased ability to market its products (including via advertising).[333]

(379) Furthermore, the market investigation indicates that a number of competitors, which have a comparable or wider portfolio of OTC products (i.e. across all OTC categories) will remain on the markets post-Transaction, further limiting the ability of the Combined CH Entity to attempt to foreclose competitors through tying and bundling practices.[334] The most cited examples were competitors like Sanofi, Johnson & Johnson, Bayer, or Reckitt Benckiser.[335] This applies to all EEA countries where the Parties' activities result in an affected market (even if the competitors named slightly differ from one country to another). One notable exception is Malta where a majority of pharmacies indicated that no other player had a similar or larger OTC product range than the Combined CH Business. However, neither GSK nor Pfizer (nor any other pharmaceutical company) is directly active in Malta. In this country, the Parties offer products via distributors and parallel imports are commonplace.[336] For these reasons, conglomerate effects are unlikely to arise in Malta.

(380) Respondents raising concerns also typically focused on conglomerate effects relating to a specific product category, in particular TPM, as well as conglomerate effects between TPM and other product categories. In that respect, the global remedy offered by the Parties, described in Section V, removes almost entirely the horizontal overlaps in the TPM segment, and thus removes any potential conglomerate effect in relation to these markets as well.

(381) Considering that the Commission concludes that the Combined CH Business will not have the ability to engage in tying and bundling practices, it is not necessary to investigate whether it would have the incentive to engage in such practices.

(382) In view of the above, and in particular the lack of ability of the Combined CH Business to engage in tying and bundling practices aimed at foreclosing

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332 Replies to Q1 - Questionnaire to pharmacies and retailers, questions 28.5, 41.5 and 54.5.

333 Replies to Q3 - Questionnaire to competitors, question 73.1.

334 Non-Horizontal Merger Guidelines, paragraph 103.

335 Replies to Q1 - Questionnaire to pharmacies and retailers, question 4; Replies to Q2 - Questionnaire to wholesalers and buying groups, or equivalents, question 10; Replies to Q3 - Questionnaire to competitors, question 6.

336 See paragraphs 280 and 289.

competitors, the Transaction does not to lead to serious doubts as to its compatibility with the internal market in relation to conglomerate effects.

V. COMMITMENTS

1. FRAMEWORK FOR THE ASSESSMENT OF THE COMMITMENTS

(383) Where a concentration raises serious doubts as regards its compatibility with the internal market, the Parties may undertake to modify the concentration so as to remove the grounds for the serious doubts identified by the Commission. Pursuant to Article 6(2) of the Merger Regulation, where the Commission finds that, following modification by the undertakings concerned, a notified concentration no longer raises serious doubts, it shall declare the concentration compatible with the internal market pursuant to Article 6(1)(b) of the Merger Regulation.

(384) As set out in the Commission's Remedies Notice,337 commitments have to eliminate the competition concerns entirely, and have to be comprehensive and effective from all points of view.338

(385) In the first phase of the Commission's investigation of a concentration ("Phase I"), commitments offered by the Parties can only be accepted where the competition concerns are readily identifiable and can easily be remedied. The competition concerns therefore need to be straightforward and the remedies clear-cut and sufficient to clearly rule out "serious doubts" within the meaning of Article 6(1)(c) of the Merger Regulation, so that it is not necessary to enter into an in-depth ("Phase II") investigation. Where the assessment confirms that the proposed commitments remove the grounds for serious doubts on this basis, the Commission clears the concentration in Phase I.[339]

(386) In assessing whether commitments will maintain effective competition, the Commission considers all relevant factors, including the type, scale, and scope of the proposed commitments, with reference to the structure and particular characteristics of the market in which the concentration is likely to significantly impede effective competition, including the position of the Parties and other participants on the market.[340]

(387) In order for commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time. Concerning the form of acceptable commitments, the Merger Regulation gives discretion to the Commission as long as the commitments meet the requisite standard. Structural commitments will meet the conditions set out above only in so far as the

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337 Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, pages 1 to 27) ("the Remedies Notice").

338 Remedies Notice, paragraphs 9 and 61.

339 Remedies Notice, paragraph 81.

340 Remedies Notice, paragraph 12.

Commission is able to conclude with the requisite degree of certainty, at the time of its Decision, that it will be possible to implement them and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that effective competition will be maintained.[341] Divestiture commitments are normally the best way to eliminate competition concerns resulting from horizontal overlaps.

2. PROCEDURE

(388) In order to render the Transaction compatible with the internal market, the Parties submitted a set of commitments under Article 6(2) of the Merger Regulation on 19 June 2019 (the "Initial Commitments"). The Commission market tested the Initial Commitments in order to assess whether they are sufficient and suitable to remedy the serious doubts identified in Section IV.3.1.2 of this Decision. Following the feedback received during the market test, the Initial Commitments were refined and improved. The Parties submitted amended commitments on 9 July 2019 (the "Final Commitments"). The Final Commitments are annexed to this Decision and form an integral part thereof.

3. INITIAL COMMITMENTS

(389) In order to dispel the serious doubts raised by the Commission in relation to TPM in several EEA Member States, the Parties submitted the "Initial Commitments consisting in the divestiture of Pfizer CH's *ThermaCare* business globally, including all necessary assets and, in particular, a dedicated manufacturing facility located in the US (the "Divestment Business").

(390) More specifically, the Divestment Business, as per the Initial Commitments, included in particular:

- The entire product range sold under the *ThermaCare* brand globally;
- Ongoing and identified past R&D projects and pipeline products relating to the *ThermaCare* brand globally;
- A dedicated manufacturing facility, located in Albany, Georgia, USA which manufactures 100% of the *ThermaCare* products sold globally, and all production equipment at the Albany site;
- All intellectual property rights relating to *ThermaCare* products and R&D or pipeline projects, including patents, domain names as well as *ThermaCare* trademark, design rights and copyrights;
- A non-exclusive, royalty-free license to the "*Robax"* trademark in Canada for a transitional period for the purpose of allowing the purchaser to continue co-branding Pfizer CH's heat patches in Canada under the *ThermaCare/Robax* trademarks during a transitional period;

341 Remedies Notice, paragraph 10.

– A non-exclusive, royalty-free license to the "*Pfizer"* trademark in the countries where the Divestment Business operates, for the limited purpose of allowing the purchaser to sell *ThermaCare* products under the "*Pfizer*" trademark until the purchaser fulfils all applicable regulatory requirements (including obtaining its own CE marking), for a transitional period;

– Data and know-how exclusively or predominantly used for the products of the Divestment Business;

– All licenses, permits, regulatory approvals, and authorizations specific to the operation of the Divestment Business;

– R&D equipment, raw materials and records primarily devoted to the Divestment Business, or required for its viability;

– Dedicated personnel, including all personnel employed at the Albany site, dedicated R&D, marketing, and supply planning personnel; and

– Transitional supply and service arrangements, including for packaging, transport, warehousing, logistics, sourcing and supply, distribution, IT services, quality systems and adverse event reporting, in order to maintain the economic viability and competitiveness of the Divestment Business, at the option of the purchaser.

(391) Under the Initial Commitments, the Parties also committed to provide their best efforts to transfer contract manufacturing and supply agreements relating to the Divestment Business. For some sourcing or supply agreements, the Parties also committed to use their best efforts to conclude back-to-back sourcing or supply agreements for a reasonable period of time.

(392) The Parties further committed to transfer the Divestment Business to a purchaser with experience in the marketing, promotion, and supply of consumer healthcare products, with an established presence or access to distribution channels in the EEA countries where the Divestment Business is active, as well as experience in working with authorities to obtain the relevant regulatory approvals.

4. RESULTS OF THE MARKET TEST

(393) On 20 June 2019, the Commission launched a market test with the purpose of verifying whether the Initial Commitments were sufficient to clearly rule out the serious doubts identified by the Commission (see Section IV.3.1.2 of this Decision). In particular, the market test aimed at verifying whether the Initial Commitments were overall suitable to address the competitive concerns identified and likely to enable the Divestment Business to continue acting as a competitive force on the TPM segment. The market test also aimed to seek feedback about the relevant criteria to identify a suitable purchaser for the Divestment Business.

(394) Overall, the feedback received from respondents to the market test was positive. The overwhelming majority of respondents considered that the commitments

were overall suitable to remove the concerns identified in the TPM area.[342] Respondents considered, generally, that the Divestment Business includes the necessary combination of assets,[343] and is likely to constitute an attractive investment opportunity for a range of purchasers.[344]

(395) However, the results of the market test also identified issues with the Initial Commitments requiring further improvements.

(396) Firstly, respondents required clarifications regarding the assets, rights, and information transferred to the Divestment Business, so as to ensure that it includes all relevant third party licenses and historical data on sales, pricing, as well as clinical data.[345]

(397) Secondly, a number of respondents indicated that the duration of the transitory supply agreements, as initially foreseen, was not sufficient. While the exact duration considered suitable for such agreements ([Time period]) was not disclosed to respondents as part of the market test, a majority of competitors indicated that such supply agreements should last for a period of two-three years or more.[346]

(398) Thirdly, the market test indicated that criteria to assess the suitability of the purchaser should be adjusted to require specifically: (i) experience in the sale and marketing of pharmaceuticals,[347] in particular OTC pharmaceutical products[348] (but not necessarily medical devices);[349] (ii) the ability to innovate in the field of healthcare products;[350] and (iii) existing third-party distribution arrangements in place in countries where the purchaser does not have its own salesforce.[351]

(399) Fourthly and lastly, a number of competitors raised concerns about the preservation of the viability and competitiveness of the Divestment Business in the divestiture scenario contemplated under the Initial Commitments. Respondents in particular feared that the *ThermaCare* brand equity would be

342 Replies to R1 - Questionnaire to TPM competitors, question 2. Replies to R2 - Questionnaire to TPM purchasers, question 2.

343 Replies to R1 - Questionnaire to TPM competitors, question 3. Replies to R2 - Questionnaire to TPM purchasers, question 3.

344 Replies to R1 - Questionnaire to TPM competitors, question 11. Replies to R2 - Questionnaire to TPM purchasers, question 8.

345 Replies to R1 - Questionnaire to TPM competitors, question 3.1.

346 Replies to R1 - Questionnaire to TPM competitors, question 9.2.

347 Replies to R1 - Questionnaire to TPM competitors, question 14. Replies to R2 - Questionnaire to TPM purchasers, question 11.

348 Replies to R1 - Questionnaire to TPM competitors, question 15. Replies to R2 - Questionnaire to TPM purchasers, question 12.

349 Replies to R1 - Questionnaire to TPM competitors, question 16. Replies to R2 - Questionnaire to TPM purchasers, question 13.

350 Replies to R1 - Questionnaire to TPM competitors, question 7.1.

351 Replies to R1 - Questionnaire to TPM competitors, question 13. Replies to R2 - Questionnaire to TPM purchasers, question 10.

negatively impacted over the divestiture period, including due to the risk of distorted incentives on the part of a combined GSK/Pfizer CH salesforce, that would likely focus on the sales of *Volta*-branded products rather than pushing for additional *ThermaCare* sales.[352]

5. FINAL COMMITMENTS

(400) The Commission communicated to the Parties a summary of the comments made by respondents to the market test, as well as its preliminary assessment of these comments.

(401) In order to address the results of the market test, the Parties submitted the Final Commitments on 9 July 2019. The Final Commitments differ from the Initial Commitments on the following main aspects:

- The scope of the rights and assets transferred as part of the Divestment Business has been clarified so as to include: (i) IP rights used under third-party licenses; and (ii) historic and current financial/accounting, pricing, sales, and clinical data.

- The purchaser criteria have been amended to ensure that the purchaser: (i) has experience in the supply of OTC products (but not necessarily medical devices); (ii) has existing third-party access to distribution channels in case it does not have its own presence in each relevant EEA market; and (iii) has the ability to innovate.

- Transitional supply agreements have been extended from a period not exceeding [Time period] with a possibility to extend them for [Time period] (that is [Time period] maximum), to a period not exceeding [Time period] with a possibility to extend such agreement for [Time period] of a maximum duration of [Time period] (first period), [Time period] (second period) and [Time period] (third period) respectively, potentially bringing the total duration of such agreements to [Time period].

- The first divestiture period has been reduced. The timing of other procedural steps, in particular in relation to the nomination of the monitoring trustee, has also been revised accordingly.

- The Parties additionally offer that the Purchaser will have the opportunity, on request, to interview and employ up to [50-60]% of Pfizer CH personnel involved in the sale of *ThermaCare* in [Geography].

- The Parties additionally commit not to integrate the Pfizer CH operations (including all employees) with any operations of GSK (including all employees) in [Geography]), until the closing of the acquisition of the Divestment Business by a suitable purchaser.

352 Replies to R1 - Questionnaire to TPM competitors, questions 2.1, 5.1, and 6.

– The Parties additionally commit to put in place specific incentive schemes to promote sales of *ThermaCare* products in [Geography], until the closing of the acquisition of the Divestment Business by a suitable purchaser.

6. ASSESSMENT OF THE FINAL COMMITMENTS

(402) The Commission notes that the Final Commitments remove nearly the entire overlap between the Parties in the area of TPM products in the EEA. Only minor overlaps would remain post-Transaction in the Netherlands and France, where Pfizer sells its *AdvilMed*, *Advil Gel* and/or *Kamol* products. However, these limited overlaps do not raise serious doubts as to the compatibility of the Transaction with the internal market.[353]

(403) In addition, the Commission considers that the Divestment Business is a viable and competitive business. In particular, from a financial perspective, the Divestment Business has consistently been operating profitably over the past three years.[354]

(404) The Commission also considers that the Divestment Business, as per the Final Commitments, includes all the necessary assets, functions and personnel necessary for the manufacturing and supply of *ThermaCare* products by a suitable purchaser.

(405) The Divestment Business will also largely be independent from the Parties post-Transaction, as the transitional supply arrangements, which do not exceed a maximum period of [Time period], aim at supporting the Divestment Business in limited areas only, and ensure that no disruption in the supply of TPM products occurs in the EEA.

(406) In addition, the Purchaser criteria included in the Final Commitments ensure that the purchaser has sufficient experience in the supply of OTC pharmaceutical products, as well as immediate access to a salesforce in the relevant EEA countries. These criteria ensure the purchaser's ability to readily and successfully continue to market *ThermaCare* products, and to compete effectively, in particular against the Combined CH Business.

(407) Finally, the viability of the Divestment Business, and in particular the *ThermaCare* brand equity, is preserved under the Final Commitments. Pfizer CH salesforce in [Geography] will not offer GSK products during the (shortened) divestiture period. This ensures that *ThermaCare* sales cannot be cannibalized by competing GSK products. In fact, the Final Commitments provide for financial incentives for Pfizer CH employees to increase the sales of *ThermaCare*, which is likely to make sales of these products more attractive to employees,

353 In both France and the Netherlands, Pfizer CH's increment will remain small. In France, Pfizer CH's *AdvilMed* gel, *Advil Gel* and *Kamol* account for a combined value share of [0-5]% in the topical pain management category (02E1) and [0-5]% in the OTC 4 class 02E10 (ointments/creams). In the Netherlands, *Advil Gel* accounts for a share of [0-5]% in the topical pain management category (02E1) and [0-5]% in the OTC 4 class 02E1O (ointments/creams).

354 See M.9274 - Form RM Annex 7 - Turnover breakdown by country and P&L - CONFIDENTIAL.xlsx and M.9274 - Form RM Annex 8 - Albany PL (2016-2019 YTD) - CONFIDENTIAL.xlsx.

comparatively to the sales of other Pfizer CH OTC products. In addition, the possibility for the purchaser to interview and employ Pfizer CH sales personnel imply that these employees may also have a longer term interest in the promotion of *ThermaCare* products. This combined set of features protects the value of the *ThermaCare* brand and its competitive presence on the market over the course of the (shortened) divestiture period, and beyond.

(408) In view of the elements discussed in this Section, the Commission concludes that the Final Commitments are suitable to remove the competition concerns identified in Section IV.3.1.2 with regards to the supply of TPM products in the EEA.

VI. CONDITIONS AND OBLIGATIONS

(409) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market

(410) The fulfilment of a measure that gives rise to the structural change of the market is a condition, whereas the implementing steps that are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market will not be, or no longer be, applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(411) In accordance with the basic distinction between conditions and obligations, Sections B, C, and D of the Final Commitments, together with the Schedule and Annexes to the Schedule, as annexed to this Decision, constitute conditions attached to this Decision, as only through their full compliance can the structural changes in the relevant markets be achieved. The other commitments (set out in Sections E and F of the Final Commitments) constitute obligations, as they concern the implementing steps that are necessary to achieve the modifications sought in a manner compatible with the internal market.

(412) The full text of the Final Commitments, together with the Schedule and Annexes to the Schedule, is attached as the Annex to this Decision and forms an integral part of this Decision.

VII. NON-CONTROLLING MINORITY SHAREHOLDING

(413) As consideration for the transfer of Pfizer CH to GSK, Pfizer will obtain a share of 32% in the Combined CH Business. Pfizer will acquire this minority share in the Combined CH Business because the Transaction is partly structured as an exchange deal. The Commission routinely reviews exchange offers resulting in a corollary acquisition of minority interests. In these cases, the Commission’s review also entails carrying out an assessment of the competitive interactions

between the undertaking in which the minority interest is obtained (in the present case, the Combined CH Business), and the retained activities of the holder of that interest (in the present case, Pfizer).[355]

(414) Hence, within the framework of the merger control assessment of the Transaction, the Commission has considered whether the structural link created by the acquisition of that minority interest could weaken GSK and Pfizer's incentives to compete in the markets where the activities of the Combined CH Business (where both GSK and Pfizer will have an interest, post-Transaction) overlap with those of Pfizer's retained business.

(415) The overlaps between the activities of the Combined CH Business and of Pfizer's retained business would give rise to the following affected markets:[356]

a) Topical pain management – M2A (ATC 3) / 02E1 (OTC 3) in Belgium, Denmark, Finland, Greece, Italy, Luxembourg, and Portugal, where Pfizer will retain *Feldene* (a piroxicam-based medicated gel). This product has very low market shares (between [0-5]% and [0-5]% in Belgium, Italy, Luxembourg, Portugal and Greece, and between [0-5]% and [0-5]% in Denmark and Finland). According to the Notifying Party, the rationale for Pfizer to keep the product is that the underlying brand is predominantly sold Rx.[357]

b) Systemic pain management – N2B+N2C+M1A+G2X1+M5X+A3D (ATC 3) / 02A1+02A2+02C1+02E2+02B1+02G2+02H1 (OTC 3) in Sweden, where Pfizer will retain *Artrox*, which has a market share of less than [0-5]%. According to the Notifying Party, the rationale for Pfizer to keep the product is that it is marketed by an entity outside of the scope of Pfizer CH and also sold Rx.

c) Antifungals – D1A (ATC 3) / 06G3 (OTC 3) in Finland and Norway, where Pfizer will mainly retain *Diflucan* and *Trosyd* which has a market share of about [10-20]% in Finland and [10-20]% in Norway, and would overlap with the Combined CH Business' *Lamisil and Trosyd*. Similarly to (b), the

355 See, e.g., Commission decision of 28 January 2015 in case M.7276 – *GlaxoSmithKline/ Novartis Vaccines Business (Excl. Influenza) / Novartis Consumer Health Business*, paragraph 9.

356 On the basis of market shares computed in value. The activities of the Combined CH Business and of Pfizer will also overlap in relation to few additional markets, but no affected market would arise under any plausible market definition. In all those instances, the combined market shares of the Combined CH Business and Pfizer on the relevant markets will remain well below [10-20]%, with Pfizer having market shares well below [5-10]% (with one exception, where the combined market share would amount to [10-20]%, with an increment of [0-5]%).

357 For example, Feldene is sold Rx in Ireland and the United Kingdom. In these two Member States, an hypothetical affected markets could arise, as Group 3 in Ireland, and as Group 1 in the United Kingdom, based on an overall OTC + Rx topical analgesics (M2A). In Ireland, while the combined shares of the Combined CH Business and Pfizer would amount to [30-40]%, Pfizer's increment (with *Feldene*) would be *de minimis* ([0-5]%). Further GSK and Pfizer will continue to face competition from a broad range of competitors, including Phoenix Labs ([20-30]%) with *Etoflam* and Rohto Corp ([10-20]%) with *Deep Heat* and *Deep Freeze*. In the UK, GSK and Pfizer would have a combined share of [30-40]%, with an increment from *Feldene* of [5-10]%. GSK and Pfizer will however continue to face competition from a broad range of competitors, including Teva ([10-20]%) with *Zacin* and *Axsain*, and Concordia ([10-20]%) with *Fenbid*.

Notifying Party submits that the rationale for Pfizer to keep the product is that it is marketed by an entity outside the scope of Pfizer CH. Moreover, the Notifying Party claims that *Lamisil and Trosyd* are in any event based on a different active ingredient (*terbinafine* and *tioconazole* respectively*).*

d) Laxatives – A6A (ATC 3) / 03C6+03C5+03C1+03C2+03C9+03C4 (OTC 3) in Finland (based on volume of sales only), where Pfizer will retain *Vi-Siblin*, while the Combined CH will offer *Pursennid Ex-Lax*, which has a market share of less than [0-5]%.

(416) In relation to (a) and (b), the Commission notes that Pfizer's retained products have low market shares and that the market investigation did not reveal that any of those products plays a significant role in the relevant markets. Therefore, the Commission considers it unlikely that the acquisition of a minority stake by Pfizer in the Combined CH Business will weaken its incentives to compete in the relevant markets and that this could have any material detrimental effects on the markets concerned.

(417) In relation to (c), the Notifying Party claimed that the Combined CH Business and Pfizer's respective products are based on different active ingredients: *Trosyd* is an antifungal product relying on *tioconazole* as an active ingredient, whereas Lamisil uses *terbinafine* hydrochloride. According to the Notifying Party, *terbinafine*/*Lamisil* is much more effective and requires a one day or week treatment, whereas *tioconazole*/*Trosyd* requires treatment of 2-3 weeks. The Notifying Party also added that, even though they are both topical products, *Trosyd* OTC is only available as a cream, whereas *Lamisil* is also sold in liquid, dusting powder and spray forms. The Combined CH Business will have market shares of about [30-40]% in Finland and [20-30]% in Norway at ATC 3 level, which mostly result from the Combined CH Business's sales of products marketed under the brand *Lamisil*. Pfizer's *Trosyd* has a market share of less than [0-5]%. The Commission notes that other strong competitors will remain on the markets concerned post-Transaction. As regards Finland: Johnson & Johnson (with a market share of [10-20]%), Orion ([10-20]%), and Bayer ([5-10]%). As regards Norway: Bayer (with a market share of [40-50]%) and Orifarm ([5-10]%). In both EEA Member States, there are competitors who would enjoy similar or larger market shares compared to those of Pfizer (notably, Johnson & Johnson and Orion in Finland, and Bayer in Norway), that would keep exerting competitive pressure on Pfizer itself, as well as on the Combined CH Business. In addition, there is no indication that *Diflucan* and *Lamisil* are close competitors as they are based on different active ingredients, have different galenic form, and are used for different indications. The market investigation did not produce evidence contradicting this reasoning.[358] Therefore, on the basis of the elements at its disposal, the Commission considers it unlikely that the acquisition of a minority stake by Pfizer in the Combined CH Business will weaken its incentives to compete in the relevant markets for antifungals and that this could have any material detrimental effects on the markets concerned.

358 Replies to Q1 – Questionnaire to pharmacies and retailers, question 55; Replies to Q2 – Questionnaire to wholesalers and buying groups, question 37 and Replies to Q3 – Questionnaire to competitors, question 72.

(418) In relation to (d), according to the Notifying Party, the limited overlap with *Pursennid Ex-Lax* will not affect Pfizer's incentives to compete post-Transaction for the two following reasons. First, as *Pursennid Ex-Lax* has limited sales in Finland (namely, €[Limited sales] according to IQVIA OTC-IMS and £[Limited sales] of wholesale sales from GSK to direct customers), competing less aggressively would not be profitable for Pfizer. Second, *Pursennid Ex-Lax* and *Vi-Siblin are* not close competitors. *Vi-Siblin* is a fibre laxative, with active ingredient *plantago ovata*, and sold in powders/granules, while *Pursennid Ex-Lax* is a contact laxative, with active ingredient *sennosides A&B,* and sold in coated tablets.[359] The Commission observes that Combined CH Business has indeed a limited share (of less than [0-5]%) on the market. The Commission also notes that strong competitors will remain on the market post-Transaction including Mylan (with a market share of [20-30]%), Takeda ([10-20]%) and Orion ([10-20]%), and will continue to exert competitive pressure on Pfizer and the Combined CH Business. Furthermore, the market investigation did not produce evidence contradicting this reasoning. Therefore, on the basis of the elements at its disposal, the Commission considers it unlikely that the acquisition of a minority stake by Pfizer in the Combined CH Business will weaken its incentives to compete in the relevant markets for laxatives and that this could have any material detrimental effects on the markets concerned.

(419) Finally, the Commission notes that the activities of Pfizer and of the Combined CH Business would not overlap in the EEA as regards Pfizer's retained switch products, that is to say, products that are likely to switch from Rx to OTC status in the EEA in the near future.

(420) In view of the above and the available evidence, the Commission concludes that the Transaction does not lead to serious doubts as to its compatibility with the internal market in relation to the acquisition by Pfizer of a non-controlling minority shareholding in the Combined CH Business.

359 In addition, fibre laxatives work by absorbing liquid in the intestines and swelling to form a soft, bulky stool. The stool then stimulates the bowel in order to overcome constipation symptoms. By contrast, contact laxatives stimulate the intestinal membranes and the peristalsis process, causing a bowel movement.

VIII. CONCLUSION

(421) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the Final Commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions set out in Sections B, C and D of the Final Commitments, together with the Schedule and Annexes to the Schedule, as annexed to the present decision and with the obligations contained in the other sections of said Final Commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission

Case COMP/M.9274 – GlaxoSmithKline / Pfizer Consumer Health Business

COMMITMENTS TO THE EUROPEAN COMMISSION RELATING TO THERMACARE TOPICAL PAIN MANAGEMENT BUSINESS

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), GlaxoSmithKline plc ("***GSK***") (the "***Notifying Party***") and Pfizer Inc. ("***Pfizer***") hereby enter into the following Commitments (the "***Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to rendering the proposed combination by GSK and Pfizer of GSK's consumer healthcare business ("***GSK CH***") and Pfizer's consumer healthcare business ("***Pfizer CH***") into a new venture under the sole control of GSK (the "***Combined CH Business***") (the "***Concentration***"), compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "***Remedies Notice***").

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

   Affiliated Undertakings: undertakings controlled by GSK or Pfizer, as the case may be, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "***Consolidated Jurisdictional Notice***").

   Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, and described more in detail in the Schedule.

   Cluj Romania Site: Pfizer's production and packaging facility located at Calea Turzii 178C, Cluj-Napoca 400495, Romania.

   Closing: the transfer of the legal title to the Divestment Business to the Purchaser.

   Closing Period: the period of [Time period] from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the topical pain management business carried on by Pfizer CH under the *ThermaCare* brand globally, as further defined in Section B and in the Schedule, which the Parties commit to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by GSK and who has/have received from GSK the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [Time period] from the Effective Date.

GSK: GlaxoSmithKline plc, incorporated under the laws of England and Wales, with its registered office at 980 Great West Road, Brentford, TW8 9GS, United Kingdom.

Hold Separate Manager: the person appointed by the Parties for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule to these Commitments, including the Hold Separate Manager.

Medical Device Design Center: The [Size] space dedicated to medical device R&D capabilities at Pfizer CH's R&D hub in Richmond, Virginia, United States.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by GSK, and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

Parties: GSK and Pfizer.

Personnel: all staff currently working for the Divestment Business who devote [50-60]% or more of their work to *ThermaCare*.

Pfizer: Pfizer Inc., incorporated under the laws of Delaware, with its registered office at 235 East 42nd Street, New York, NY 10017, United States.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 17 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing more in detail the Divestment Business.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of [Time period] from the end of the First Divestiture Period.

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, the Parties commit to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 18 of these Commitments. To carry out the divestiture, GSK commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If GSK has not entered into such an agreement at the end of the First Divestiture Period, GSK shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 30 in the Trustee Divestiture Period.

3. The Parties shall be deemed to have complied with this commitment if:

   (a) by the end of the Trustee Divestiture Period, GSK or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 18; and

   (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.

4. In order to maintain the structural effect of the Commitments, GSK shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from GSK showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 44 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

5. The Divestment Business consists of the topical pain management business carried on by Pfizer CH under the *ThermaCare* brand globally. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in

more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

(a) all tangible and intangible assets relating to the *ThermaCare* business, including intellectual property and know-how, a dedicated production site located in Albany, Georgia, US, as well as R&D assets;

(b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

(c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and

(d) the Personnel.

6. In addition, at the option of Purchaser, the Divestment Business includes the benefit, for a transitional period of [Time period] after Closing of certain transitional service agreements (with the possibility to extend for further periods set out in the Schedule, at the Purchaser's request and subject to the opinion of the Monitoring Trustee) including, but not limited to, sourcing, transport, logistics, secondary packaging, and distribution, as detailed in the Schedule. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such transitional arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the respective party providing the transitional products and/or services.

7. For the avoidance of doubt, the Divestment Business shall not include:

(a) the space occupied by Medical Device Design Center in Richmond, Virginia, US, and all equipment, raw materials and records housed in that space, the use of which are less than [50-60]% devoted to the Divestment Business;

(b) the Cluj, Romania Site;

(c) the *Robax* brand or trademark (save for a transitional non-exclusive trademark licence as detailed in the Schedule);

(d) the "GSK" or "Pfizer" company name, marks, or logos in any form (with the exception of the transitional non-exclusive license to the Pfizer trademark as referred to in paragraph 21(r) of the Schedule);

(e) intellectual property rights which do not contribute to the operation of the Divestment Business;

(f) shared functions and personnel, as outlined in the Schedule, provided however, that (i) in respect of the [Number] personnel from the Combined CH Business' functional group "[Personnel Group]" and (ii) in respect of other personnel who are involved on the Effective Date in the sale of *ThermaCare* in the countries [Geography], the Parties commit to offer the Purchaser the opportunity on request for

[Time period], to interview and hire such personnel, provided that the Parties shall act in good faith in evaluating any potential role changes or redundancies for such personnel, and shall not carry out any such role changes or redundancies for the purpose of frustrating this commitment, without prejudice to the application of the other provisions of these Commitments including paragraph 10 below, provided further that the Purchaser may hire at most [50-60]% of the personnel within category (ii) above;

(g) books and records required to be retained pursuant to any statute, rule, regulation or ordinance, provided that the Parties will provide copies of such documents necessary for the Divestment Business to the Purchaser, upon request; and

(h) general books of account and books of original entry that comprise the Parties' or any of their Affiliated Undertakings' permanent accounting or tax records, provided that the Parties will provide copies of such documents necessary for the Divestment Business to the Purchaser, upon request.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

8. From the Effective Date until Closing, the Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular the Parties undertake:

(a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

(b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans. To that end, the Parties commit to take all reasonable steps, or procure that all reasonable steps are being taken, to ensure that the Divestment Business continues to receive all the necessary support from the Parties it needs to allow it to meet the existing business plans. In particular, the Parties will ensure that, in addition to assets, personnel and other resources being held separate, the Divestment Business will have access to shared assets, personnel and resources on a transitional basis in line with past practice, that is on the same level as before the Hold Separate period, and as needed to maintain the viability and competitiveness of the Divestment Business; and

(c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the Parties' remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, GSK shall provide a reasoned proposal to replace the person or persons concerned to the

Commission and the Monitoring Trustee. GSK must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

9. Subject to paragraph 10 below, the Parties commit, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses retained by the Parties and to ensure that unless explicitly permitted under these Commitments (including as necessary to provide transitional services to the Divestment Business covering shared functions during the hold separate period): (i) management and staff of the business(es) retained by the Parties have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Parties and do not report to any individual outside the Divestment Business.

10. Until Closing, the Parties commit not to integrate the Pfizer CH operations (including all employees) with any operations of GSK (including all employees) in [Geography] (provided for the avoidance of doubt, this shall not preclude such Pfizer CH employees carrying out regional or global functions). The Parties further commit to create specific incentive schemes, in accordance with the principles set out in Annex 10, for all sales personnel with activities relating to the Divestment Business in [Geography] such that these personnel have greater incentives (in terms of remuneration) in respect of their activities relating to the Divestment Business than under existing incentive schemes. The Parties further commit not to reduce the total amount of employee time currently dedicated solely to the Divestment Business, without prejudice to paragraph 11 below.

11. Until Closing, the Parties shall assist the Hold Separate Manager and the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business(es) which the Parties are retaining. Immediately after the adoption of the Decision, the Parties shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties. In addition, the Parties commit that the Hold Separate Manager will have the appropriate position and authority to direct the use of the shared resources and assets made available to the Divestment Business pursuant to paragraph 8(b), and instruct personnel that are shared with the Parties in line with past practice and as needed to maintain the viability and competitiveness of the Divestment Business. The Hold Separate Manager may request additional resources reasonably necessary to meet the existing business plans. The Parties shall make available such additional resources. To the extent the Parties disagree with the need for these additional resources, the Monitoring Trustee shall assess and have the final authority to determine whether the additional resources requested are reasonably necessary. To ensure the continuing viability and competitiveness of the Divestment Business, the incentive scheme for the Hold Separate Manager will be dependent upon the performance of the Divestment Business throughout the Hold Separate period. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 8(c) of these Commitments. The Commission may, after having heard GSK, require GSK to replace the Hold Separate Manager.

Ring-fencing

12. The Parties shall implement, or procure to implement, all necessary measures to ensure that they do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business, except as is necessary to ensure the viability of the Divestment Business (including as is necessary to provide transitional services to the Divestment Business). In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Parties may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to the Parties are required by law.

Non-solicitation clause

13. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [Time period] after Closing.

Due diligence

14. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, GSK shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

    (a) provide to potential purchasers sufficient information as regards the Divestment Business; and

    (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

15. GSK shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). GSK shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

16. GSK shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

17. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

    (a) The Purchaser shall be independent of and unconnected to GSK and Pfizer and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);

    (b) The Purchaser shall have experience in the marketing, promotion and supply of a portfolio of consumer healthcare products in the EEA (including but not necessarily limited to OTC pharmaceutical products); and

    (c) The Purchaser shall have an established presence in and/or existing third-party access to the distribution channels typically used in the distribution of consumer healthcare products (including in particular pharmacies and where relevant mass retail) in each of the EEA markets in which the Divestment Business is active;

    (d) The Purchaser shall have experience in working with authorities and competent bodies in the EEA in obtaining necessary regulatory approvals and authorisations for commercialisation;

    (e) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors, including the ability to innovate; and

    (f) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

18. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When GSK has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. GSK must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

19. GSK shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. GSK commits not to close the Concentration before the appointment of a Monitoring Trustee.

20. If GSK has not entered into a binding sale and purchase agreement regarding the Divestment Business [Time period] before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by GSK at that time or thereafter, GSK shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

21. The Trustee shall:

    (i) at the time of appointment, be independent of GSK and Pfizer and their Affiliated Undertakings;

    (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

    (iii) neither have nor become exposed to a Conflict of Interest.

22. The Trustee shall be remunerated by GSK in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by GSK

23. No later than [Time period] after the Effective Date, GSK shall submit the name or names of one or more natural or legal persons whom GSK proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than [Time period] before the end of the First Divestiture Period or on request by the Commission, GSK shall submit a list of one or more persons whom GSK proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 21 and shall include:

    (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

    (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and

    (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

24. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, GSK shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, GSK shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by GSK

25. If all the proposed Trustees are rejected, GSK shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 19 and 24 of these Commitments.

Trustee nominated by the Commission

26. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom GSK shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

27. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or GSK, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

28. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;

(ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 8 – 10 of these Commitments;

(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 11 of these Commitments;

(c) with respect to Confidential Information:

- determine all necessary measures to ensure that the Parties do not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
- in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
- make sure that any Confidential Information relating to the Divestment Business obtained by the Parties before the Effective Date is eliminated and will not be used by the Parties and
- decide whether such information may be disclosed to or kept by the Parties as the disclosure is reasonably necessary to allow the Parties to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Parties or Affiliated Undertakings;

(iii) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(a) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(b) potential purchasers are granted reasonable access to the Personnel;

(v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(vi) provide to the Commission, sending GSK a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

(vii) promptly report in writing to the Commission, sending GSK a non-confidential copy at the same time, if it concludes on reasonable grounds that GSK is failing to comply with these Commitments;

(viii) within three working days after receipt of the documented proposal referred to in paragraph 18 of these Commitments, submit to the Commission, sending GSK a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser; and

(ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

29. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

30. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 17 and 18 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of GSK, subject to the Notifying Party's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

31. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to GSK.

III. Duties and obligations of the Parties

32. The Parties shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties and the

Divestment Business shall provide the Trustee upon request with copies of any document. GSK and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

33. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Parties shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. GSK shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

34. GSK shall grant or procure GSK's Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, GSK shall cause the documents required for effecting the sale and the Closing to be duly executed.

35. GSK shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to GSK for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

36. At the expense of GSK, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to GSK's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should GSK refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard GSK. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 35 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served GSK during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

37. The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

38. GSK agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

39. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

40. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

(a) the Commission may, after hearing the Trustee and GSK, require GSK to replace the Trustee; or

(b) GSK may, with the prior approval of the Commission, replace the Trustee.

41. If the Trustee is removed according to paragraph 40 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 19-26 of these Commitments.

42. Unless removed according to paragraph 40 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

43. The Commission may extend the time periods foreseen in the Commitments in response to a request from GSK or, in appropriate cases, on its own initiative. Where GSK requests an extension of a time period, it shall submit a reasoned request to the Commission no later than two weeks before the expiry of that period, showing good cause**.** This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall GSK be entitled to request an extension within the last two weeks of any period.

44. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

45. The Commitments shall take effect upon the date of adoption of the Decision.

SCHEDULE

1. The Divestment Business consists of the topical pain management business carried on by Pfizer CH under the *ThermaCare* brand globally.

2. In accordance with paragraph 5 of these Commitments, the Divestment Business includes:

(a) The entire product range sold under the *ThermaCare* brand globally. The *ThermaCare* range includes topical heat wraps, which Pfizer CH manufactures in-house at the Albany site, as well as two topical gels/creams manufactured by third parties under contract: *ThermaCare Ultra Pain Relieving Cream*, sold only in the US, and *ThermaCare Schmerzgel*, sold only in Germany.

(b) A dedicated Pfizer CH manufacturing facility, located in Albany, Georgia, US which manufactures 100% of the *ThermaCare* wraps for sale worldwide. [Information on Pfizer CH's manufacturing facilities] is provided as **Annex 1**;

(c) All production equipment at the Albany site, a list of which is included as **Annex 2**;

(d) Raw materials if any, work in progress and finished goods inventory, supplies and promotional material relating exclusively to the Divestment Business, or necessary to the viable operation of the Divestment Business, held at the date of Closing;

(e) All intellectual property rights relating to existing and legacy products (including, for the avoidance of doubt, *ThermaCare Cold Wraps* and any other discontinued *ThermaCare*-branded product) and R&D or pipeline projects necessary for the viable operation of the Divestment Business globally, whether owned by Pfizer or used under third-party license, including:

(i) All *ThermaCare* trademark and design rights (including logos, sub-brands, taglines, trade dress) and copyrights currently and previously used for the sale of products within the Divestment Business across the globe. Relevant trademarks (including trademark design rights) identified by the Parties at this stage are listed in **Annex 3**;

(ii) All patents (including utility and design patents) relating to the Divestment Business (patents identified by the Parties at this stage are listed in **Annex 4**);

(iii) Rights to any domain names that relate to *ThermaCare* (domain names identified by the Parties at this stage are listed in **Annex 5**).

For the avoidance of doubt, intellectual property rights that are exclusively or predominantly used for or by the Divestment Business will be transferred to the Purchaser subject to a non-exclusive, perpetual, irrevocable, royalty-free license-back to the Combined CH Business or Pfizer (as the case may be) to the extent any such rights are necessary for the operation of any business of the Combined CH Business or of any Pfizer business on the Effective Date. GSK and Pfizer shall retain ownership of all of their existing intellectual property rights that are not exclusively or predominantly used for or by the Divestment Business. If any of these rights are necessary for the viability of the Divestment Business (subject to the opinion of the Monitoring Trustee) such rights shall be subject to a non-exclusive, perpetual, irrevocable, royalty-free license to the Purchaser, to the extent necessary for the operation of the Divestment Business (except as specified in paragraphs 2(q) and 2(r) below);

(f) Transfer of all know-how and data that is exclusively or predominantly used for the development, manufacturing and marketing of products by the Divestment Business, including recipes for the *ThermaCare Schmerzgel* and *ThermaCare Ultra Pain Relieving Cream* formulations (subject to a non-exclusive, perpetual, irrevocable, royalty-free license-back to the Combined CH Business or Pfizer to the extent any such know-how or data are necessary for the operation of any business of the Combined CH Business or Pfizer on the Effective Date); and a non-exclusive, perpetual, irrevocable, royalty-free license to the Purchaser of all know-how and data that is not predominantly used for, but necessary for the viable operation of the Divestment Business (if any). This know-how is embodied in [Information on ThermaCare knowhow];

(g) All licenses, permits, regulatory approvals and authorizations specific to the operation of the Divestment Business issued by any governmental organization for the benefit of the Divestment Business;

(h) Ongoing and identified past R&D projects and pipeline products relating to the *ThermaCare* brand globally. A list of pipeline projects is included in **Annex 6**. At the option of the Purchaser, GSK will provide for a reasonable period not exceeding [Time period] (with the possibility to extend for a further [Time period], at the Purchaser's request and subject to the opinion of the Monitoring Trustee) technical assistance in relation to the transfer of all ongoing pipeline projects in order to enable the Purchaser to continue the development of such projects without delay;

(i) All R&D equipment (listed in **Annex 7**), raw materials and records, the use of which are [50-60]% or more devoted to the Divestment Business, or required for the viability of the Divestment Business, housed in [Location]. These assets will be transferred to a location agreed upon with the Purchaser;

(j) Customer lists, historic and current financial/accounting, marketing and pricing data and sales reports, as well as technical files (including regarding the CE mark) associated with regulatory approvals, including, for the avoidance of doubt, past business records and clinical data, credit and other records and goodwill to the extent exclusively related to the Divestment Business or otherwise necessary to ensure the viability and competitiveness of the Divestment Business (subject to the opinion of the Monitoring Trustee);

(k) Best efforts to transfer (by way of assignment) the contract manufacturing and supply agreements, or relevant portions thereof, with [Information on contract manufacturing and supply agreements] relating to, respectively, *ThermaCare Ultra Pain Relieving Cream* and *ThermaCare Schmerzgel* or, in the absence of transfer, to enable the Purchaser to conclude a new contract manufacturing and supply agreements in relation to these products, including by sharing the relevant information such as the existing contract terms and conditions. To the extent necessary, the Parties commit to use their best efforts to conclude back-to-back supply agreements with the Purchaser for a reasonable period not exceeding [Time period] after Closing (with the possibility to extend for [Time period] at the Purchaser's request and subject to the opinion of the Monitoring Trustee) until the Purchaser concludes its own arrangements;

(l) With regard to any other sourcing or supply agreements or arrangements with third parties, including but not limited to the supply agreement with [Third party] for the chemistry pre-mix, best efforts (i) to assign these agreements or the relevant portions thereof, or (ii) if assignment is not possible, share the relevant supplier details, existing terms and conditions and other necessary information in order to assist the Purchaser to conclude new agreements with the relevant suppliers at the Purchaser's option. To the extent necessary, the Parties commit to use their best efforts to conclude back-to-back sourcing or supply agreements with the Purchaser for a reasonable period not exceeding [Time period] after Closing (with the possibility to extend for [Time period] at the

Purchaser's request and subject to the opinion of the Monitoring Trustee) until the Purchaser concludes its own arrangements;

(m) Best efforts to transfer the relationship with the third party [Third party] as regards distribution by [Third party] of *ThermaCare* in the US and transitional support as specified in (s) below;

(n) A Hold-Separate Manager, based in the US or the EEA, with all required experience to effectively run the *ThermaCare* business with the support of the personnel under point (o) below during the hold-separate period;

(o) Personnel (an organizational chart and list of employees that will be transferred is attached as **Annex 8**)

(i) A dedicated supply planner, based in [Location];

(ii) All personnel employed at the Albany site, including a dedicated site leader, management team and production team;

(iii) Dedicated research and development personnel [Information on Pfizer CH personnel];

(iv) Dedicated personnel for marketing: [Information on Pfizer CH marketing personnel]. Additionally, in relation to other personnel who are involved on the Effective Date in the sale of *ThermaCare* in the countries in [Geography], the Parties commit to offer the Purchaser the opportunity on request for [Time period], to interview and hire such personnel, provided that the Parties shall act in good faith in evaluating any potential role changes or redundancies for such personnel, and shall not carry out any such role changes or redundancies for the purpose of frustrating this commitment, without prejudice to the application of the other provisions of these Commitments including paragraph 10 above, provided further that the Purchaser may hire at most [50-60]% of such personnel;

(v) [Number] newly created positions of dedicated sales persons covering [Geography].

(p) Of the Personnel mentioned in (o) above, the Key Personnel are:

(i) Hold Separate Manager;

(ii) [Information on Pfizer CH Key Personnel name], [Geography] site leader, [Information on Pfizer CH Key Personnel work location];

(iii) [Information on Pfizer CH Key Personnel name], Site Supply Chain Lead, [Information on Pfizer CH Key Personnel work location];

(iv) [Information on Pfizer CH Key Personnel name], Process Technology & Medical Device Engineering Lead, [Information on Pfizer CH Key Personnel work location];

(v) [Information on Pfizer CH Key Personnel name], Site Engineer/EHS Lead, [Information on Pfizer CH Key Personnel work location];

(vi) [Information on Pfizer CH Key Personnel name], Site OpEx Training Lead, [Information on Pfizer CH Key Personnel work location];

(vii) [Information on Pfizer CH Key Personnel name] , Site Operations Lead,

[Information on Pfizer CH Key Personnel work location];

(viii) [Information on Pfizer CH Key Personnel name], Principal Scientist Design Authority (formerly R&D Manager ThermaCare Design), [Information on Pfizer CH Key Personnel work location];

(ix) [Information on Pfizer CH Key Personnel name], Senior Associate Product Manager, [Information on Pfizer CH Key Personnel work location];

(x) [Information on Pfizer CH Key Personnel name], Manager, Brand Lead ThermaCare, [Information on Pfizer CH Key Personnel work location];

(xi) [Information on Pfizer CH Key Personnel name], Product Manager Iberia, [Information on Pfizer CH Key Personnel work location];

(xii) [Information on Pfizer CH Key Personnel name], Product Manager, [Information on Pfizer CH Key Personnel work location];

(xiii) [Information on Pfizer CH Key Personnel name], Junior Product Manager, [Information on Pfizer CH Key Personnel work location];

(xiv) [Information on Pfizer CH Key Personnel name], Business Development Manager, [Information on Pfizer CH Key Personnel work location];

(xv) [Information on Pfizer CH Key Personnel name], Senior Sales Strategy Manager, [Information on Pfizer CH Key Personnel work location].

(q) A non-exclusive, royalty-free license to the *Robax* trademark in Canada for use in the field of OTC topical pain management, to allow the Purchaser to manufacture, distribute and sell wraps produced by the Divestment Business for a period of [Time period] from Closing (with the possibility to extend for a further [Time period], at the Purchaser's request and subject to the opinion of the Monitoring Trustee). Throughout this transitional period, the Purchaser shall be able to use the *Robax* brand without limitations in relation to the *ThermaCare*/*Robax* co-branded products, and the Parties commit not to use the *Robax* brand for topical pain management products during this transitional period;

(r) A non-exclusive, royalty-free license to the Pfizer trademark in the countries where the Divestment Business operates, for use in the field of OTC topical pain management, for the limited purpose of allowing the Purchaser to sell *ThermaCare* wraps under the Pfizer trademark until the Purchaser fulfills all applicable regulatory requirements (including obtaining its own CE marking), for a transitional period not exceeding [Time period] from Closing (with the possibility to extend for a further [Time period], at the purchaser's request and subject to the opinion of the Monitoring Trustee);

(s) Transitional supply and service arrangements in order to maintain the economic viability and competitiveness of the Divestment Business as agreed with the Purchaser (unless the Purchaser does not require such transitional support). All transitional agreements will be completed at the option of the Purchaser, for a transitional period of up to [Time period] after Closing (with the possibility to extend for a further [Time period], at the Purchaser's request and subject to the opinion of the Monitoring Trustee) on a cost basis. Such transitional support includes:

(i) Transitional packaging agreement for the secondary packaging of the *ThermaCare* SKUs identified in **Annex 9** from [Location];

(ii) Transitional agreements covering *inter alia* transport, warehousing and logistics;

(iii) Transitional back-to-back arrangements for the distribution of *ThermaCare* products in countries where the Divestment Business relies on third-party distributors;

(iv) Transitional support for IT systems;

(v) Transitional services covering quality systems and adverse event reporting (currently provided from Pfizer's [Location] sites);

(vi) Transitional back-to-back arrangement for the dedicated sales support of *ThermaCare* in the US through broker [Third party];

(vii) The Parties will collaborate with the Purchaser to identify, negotiate and agree on additional transitional arrangements to ensure smooth operation of the Divestment Business.

3. The Divestment Business shall not include:

(a) the space occupied by the Medical Device Design Center in Richmond, Virginia US and all equipment, raw materials and records housed in that space, the use of which are less than [50-60]% devoted to the Divestment Business (all equipment, raw materials and records that are [50-60]% or more devoted to the Divestment Business are in scope);

(b) the Cluj, Romania Site;

(c) intellectual property rights which are not related to the operation of the Divestment Business;

(d) the *Robax* brand or trademark (save for a limited, transitional, non-exclusive trademark licence as referred to in paragraph 2(q) above);

(e) the "GSK" or "Pfizer" company name, marks, logos and domain names in any form (with the exception of the limited, transitional, non-exclusive license to the Pfizer trademark as referred to in paragraph 2(r) above);

(f) subject to 2(o)(iv) above, shared functions and personnel who devote less than [50-60]% of their work to the *ThermaCare* Business, including;

(1) Corporate;

(2) Finance (except two dedicated FTEs in Albany);

(3) Human Resources;

(4) Legal;

(5) Broader R&D facilities and personnel, provided however, that solely in respect of the [Number] personnel from the Combined CH Business's functional group

"[Personnel Group]", GSK commits to offer to the Purchaser the opportunity on request to interview and employ such personnel;

(6) Commercial/Marketing;

(7) Sales, customer support and logistics;

(8) IT systems;

(9) other back office functions; and

(10) a number of shared resources in the areas of regulatory, safety, quality, post-market surveillance and pharmacovigilance requirements that are not dedicated to *Thermacare*.

4. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business (subject to the opinion of the Monitoring Trustee), that asset or adequate substitute will be offered to the Purchaser.

ANNEXES

Annex No.	Description	Confidentiality
1	[Annex 1]	Confidential
2	List of equipment and machinery at the Albany site	Confidential
3	List of trademarks	Confidential
4	List of patents	Confidential
5	List of domain names	Confidential
6	List of pipeline projects	Confidential
7	List of *ThermaCare* dedicated equipment at the Richmond site	Confidential
8	Organizational chart and list of employees that will be transferred with the Divestment Business	Confidential
9	SKUs packaged in [Location]	Confidential
10	Details of *ThermaCare*-specific incentive scheme	Confidential