

Monopolies and Mergers Commission report on the merger
between IMS Health Incorporated of Pharmaceutical Marketing
Services Incorporated

Request for release from undertakings given by IMS Health Incorporated
pursuant to section 88 of the Fair Trading Act 1973.

The OFT's advice to the Competition Commission on IMS Health's request for
release of undertakings under section 88(4) Fair Trading Act 1973, as
amended, given on 6 August 2013. Full text of advice published 12 August
2013.

**Please note that the square brackets indicate figures or text which have been
deleted or replaced in ranges at the request of the parties or third parties for
reasons of commercial confidentiality.**

1. The Office of Fair Trading (OFT) has received a request from IMS Health Incorporated (IMS) to be released from the undertakings accepted by the Secretary of State for Trade and Industry on 29 October 1999 (the Undertakings) following the report by the Monopolies and Mergers Commission (MMC) into the merger between IMS and Pharmaceutical Marketing Services Incorporated (PMSI). Responsibility for these undertakings was transferred to the Competition Commission on 10 March 2006 by SI No.355/2006 – The Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2006.
2. The OFT has considered the request for release and provides advice to the CC pursuant to section 88(4) Fair Trading Act 1973 (the Act), as amended, on whether or not there has been a change of circumstance since the Undertakings were accepted.

JURISDICTION

3. Under s.88(4) of the Act as amended by Schedule 24 paragraph 16 (1) – (6) of the Enterprise Act 2002, the Office of Fair Trading (OFT) has a

duty to advise the Competition Commission (CC) as the relevant authority whether there has been a change of circumstances since the undertaking was obtained and, whether, by reason of any change of circumstances, the undertaking is no longer appropriate and either one or more of the parties can be released from it, or the undertaking needs to be varied or superseded. The CC then decides whether to act upon that advice and, if appropriate, seek revised undertakings.

BACKGROUND

4. IMS acquired PMSI in August 1998. The merger was referred to the Monopolies and Mergers Commission (MMC) on 14 October 1998 and the MMC reported on 25 February 1999 (the MMC report).¹
5. The effect of the merger had been to combine the operations of IMS and PMSI within specialised pharmaceutical data services, in which IMS accounted for some 85 per cent and PMSI eight per cent. The MMC concluded that the merger situation would operate against the public interest because it was expected to:
 - result in higher prices to pharmaceutical companies
 - weaken incentives to improve quality of data and service
 - dampen innovation and choice in supply of specialised pharmaceutical data services than would otherwise be the case, and
 - lower rewards to data providers, weakening the incentives to provide data and maintain the quality of data provided.
6. The merger was therefore expected to have adverse effects on the efficiency and effectiveness and costs of the management and marketing of pharmaceutical companies. As a further consequence of these adverse effects on the pharmaceutical companies, the merger was also expected to result in higher costs to the National Health Service, higher prices of non-prescription (over-the-counter) medicines and a reduced choice of pharmaceutical products.

¹ *IMS Health Inc and Pharmaceutical Marketing Services Inc: A report on the merger situation.* Cm 4261.

7. The MMC concluded that a divestment of PMSI or of Source ² as a whole or of either of their prescription data businesses was unlikely to be as reliable or effective in this case in remedying the adverse effects identified as other measures to restore the competition that has been lost as a result of the merger. The MMC, therefore, recommended that IMS should:
 - a. divest PMSI's former business based on wholesale data (Source Dispenser)
 - b. license prescription data on reasonable terms to other parties
 - c. price all its UK specialized pharmaceutical data services according to transparent price lists and discounts
 - d. be prevented from selling specialised pharmaceutical data services in the UK as a package or discount to the same effect, and
 - e. be prevented from entering into, maintain or enforce exclusive contracts with its data providers or to take other action in relation to computer hardware or software that would have the same effect.
8. The OFT, in advising the Secretary of State, accepted the MMC's recommendation, and in October 1999 the then Secretary of State for Trade and Industry accepted undertakings in accordance with the MMC's recommendations and the OFT's advice.

The Undertakings

9. To address the adverse effects identified by the MMC, IMS was required to sell Source Dispenser, PMSI's wholesale data business. This divestment was completed on 2 October 2000.³ The second undertaking above was time limited, initially to 31 August 2004, subsequently extended by the OFT to 28 February 2005. This undertaking, to license prescription data on reasonable terms to other parties, was designed to aid entry to sectors for the supply of pharmaceutical wholesale data and

² PMSI also owned Source Informatics Inc (Source) a competitor of IMS

³ The Source Dispenser business was divested by IMS Health to NDC Health Corporation in October 2002. IMS has advised that in 2002 NDC Health Corporation contributed the Source Dispenser business to a newly created 50:50 joint venture with Ceredim S.A, called Infopharm Limited; and that Cegedim acquired NDC Health's UK business in October 2004, thus acquiring full ownership of the Source Dispenser business. [].

prescription data. The OFT found that in the five years since the undertakings were accepted the licensing obligation had not been used by any business for the intended purpose and that there was no substantive evidence that it would be in the future. The OFT therefore considered that there was no justification to extend the licensing obligation beyond, 28 February 2005 when it is due to lapse.⁴

10. As a result of its review, the OFT found that the main players' shares of supply had changed very little and had received evidence from third parties that suggested that removing the remaining behavioural undertakings might jeopardise the degree of competition, at that time, in the market. The OFT therefore concluded that the remaining undertakings should remain in place. It is from these three remaining behavioural undertakings, c), d) and e) above, that IMS seeks release.

REVIEW OF UNDERTAKINGS

11. In seeking a release from the remaining undertakings IMS argues that the primary objective of these behavioural undertakings was to facilitate the implementation of a structural remedy in respect of wholesale data, the divestment of Source Dispenser, and to supplement the licensing undertaking in respect of prescription data. IMS point out that it is now some eight years since the licensing remedy that the undertakings were designed to supplement lapsed and that these behavioural undertakings distort IMS's commercial and competitive freedoms and operate against the consumer interest. However, the 1999 MMC Report sets out in its recommendations ⁵ that that the remaining behavioural remedies were designed to be partly supportive of the two more structural remedies, but were also designed assist in the lowering of barriers to entry in this market.
12. IMS has also argued that there has been a significant change in circumstance, since the OFT's last review in 2005, that would justify IMS's release from these remaining behavioural undertakings. Namely that:
 - a. Since December 2011 the UK government has published English GP prescription data free of charge as part of its Transparency Initiative,

⁴ OFT press release 32/05 of 18 February 2005, [OFT completes review of IMS Health merger undertakings - The Office of Fair Trading](#)

⁵ Paragraphs 2.90 -2.95 of *IMS Health Inc and Pharmaceutical Marketing Services Inc: A report on the merger situation*. Cm 4261.

via the NHS Information Centre.⁶ NHS prescription data are thus available for England, which, the parties claim, represents around 80 per cent of total UK prescriptions. NHS Wales publishes GP Practice analysis giving total volumes prescribed and, from April 2013, prescribing data by GP practice will be made available at presentation level. Northern Ireland's HSC has made individual drug data available to purchase since April 2012, while NHS Scotland publish, on a quarterly basis, remuneration information at Health Board Level.⁷

IMS submitted that the data made available free of charge was directly comparable to the prescription data purchased and provided by IMS, since:

- Both provide monthly data.
- The NHS data is broken down to the level of individual GP practices, while by contrast IMS data reflect groupings of retail pharmacies, which is less granular than the NHS data.
- Both include all prescribed medicines, dressings and appliances dispensed from an NHS reimbursable prescription each month, and both exclude prescriptions that are not dispensed.
- Both include value measures and volumetric measures.
- Both show individual transactions categorized according to therapy area classification codes.
- Both identify product, form and strength level.

As a result, IMS submit, a new entrant could source the data free of charge, thus reducing barriers to entry.

b. IMS submitted that since the NHS prescription data has become available there has been considerable new entry, and pointed to:

- **Cegedim**, which IMS says offers specialised pharmaceutical data sourced from the NHS and available using Cegedim's 'MultiView' software.⁸

⁶ These data are published monthly, three months in arrears.

⁷ All the Home Countries Health Services publish Annual Prescription Cost Analysis Data, on their websites, which provides details of the number of items and the net ingredient cost of all prescriptions in the year.

⁸ www.cegedimstrategicdata.com/Corporate/AboutUs/Pages/who.aspx - Cegedim Strategic Data (CSD) offers a comprehensive range of market research services by integrating its numerous data sources (primary market research, promotion audit, longitudinal patient

- **NHiS**, developed a new service, called GPRx, based on the freely available NHS prescription data.⁹ This service provides a monthly feed of product and market sales by therapy area and by GP practice, available in Microsoft Excel format.
- **Harvey Walsh**,¹⁰ (owned by Chime plc) is a health information specialist that has traditionally focused on Hospital Episodes Statistics data (licensed from the NHS). IMS submitted that Harvey Walsh has now added NHS prescription data to its product offering.
- **Scriptmap**, which launched its prescription data website in December 2012.¹¹ This website allows users to see prescriptions written by GPs in England, by product strength at surgery, PCT, town, district or national levels. The user is also able to choose between seeing the data as maps or reports (which can be downloaded into Microsoft Excel).

IMS also submitted that it believes that numerous other companies are already using NHS prescription data, including, Data Intelligence, Accenture, and McKinsey. IMS also identified as potential competitors: Oracle, Business Objects, Roambi, SAS, and Qlikview all major IT companies.

13. IMS submitted that the publication of NHS prescription data and the ensuing new entry has affected IMS directly and appreciably. It submitted that its customers have shown a readiness to access and view NHS prescription data, and that a number of customers [].
14. IMS commented that it was aware that a large number of its customers were []. IMS anticipated that these customers []. IMS is also aware that many of its customers are using NHS prescription data to []¹². [].

databases, and clinical research). This information is collected from general practitioners, specialists (office and hospital based), pharmacists and patients. [].

⁹ www.nhis.info/products/quantis/gprx-definitive-practice-prescribing-data/225

¹⁰ www.harveywalsh.co.uk/home

¹¹ <http://scriptmap.co.uk>

¹² [].

OFT Consultation

15. An invitation to comment notice was issued on 22 January 2013 inviting interested third parties to make comments to the OFT. The OFT also sent targeted letters to suppliers, customers, and competitors, in particular those new entrants identified by IMS.
16. There was a limited response from companies identified by the parties as suppliers, competitors and customers.¹³ In general those who did respond considered that despite prescription data for England being released by the government there was still a need for the undertakings given the difficulties in using the free data, the fact that the data only covered England,¹⁴ and IMS' position in the market.

OFT ADVICE

17. The OFT received a request from IMS to release it from the remaining behavioural undertakings that were accepted by the Secretary of State following the MMC's 1999 Report into the merger between IMS and PMSI. The OFT has found that the NHS in England and Wales do publish data that is comparable to that purchased by IMS,¹⁵ while all Home Countries publish Annual Prescription Cost Analysis Data. The parties identified a number of competitors that they considered to be new entrants.
18. The OFT has found, on the basis of the evidence available, that there has been a change of circumstances since the Undertakings were accepted given, in particular, that the UK government now publishes free of charge,¹⁶ on a monthly basis, GP prescription data that is three months in arrears, for England.
19. However, the effect of the change in circumstances is unclear. IMS has submitted that new entry has been facilitated by the free NHS data, although, the OFT has been unable to verify the extent of this new entry and its impact on the marketplace. IMS has also submitted that its customers are [],¹⁷ although third party responses did not confirm the

¹³ Responses were received from one customer, one supplier and three competitors, all three competitors had been identified by IMS as new entrants.

¹⁴ These third parties did not refer to the data sets available in Wales nor the annual cost analysis data sets available for each home country.

¹⁵ See paragraph 12 (a) above.

¹⁶ Since December 2011.

¹⁷ See paragraph 14 above.

extent to which the NHS data enables customers to [] to be a viable substitute for the IMS data.

20. On the basis of this mixed evidence, therefore, the advice of the OFT is that further consideration of whether it is appropriate to release the undertakings, should be undertaken by the CC.