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Completed acquisition by United Drug plc of Pharmexx UK Limited

ME/5561/12

The OFT's decision on reference under section 22(1) given on 21 December 2012. Full text of decision published 30 January 2013.

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**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.**

## **PARTIES**

1. **United Drug plc** (United Drug) is a company incorporated in the Republic of Ireland. United Drug holds 100 per cent of **Ashfield In2focus Limited**, through its intermediate holding company United Drug (UK) Holdings Limited. United Drug provides commercialisation solutions to international healthcare companies, and specialises in supply chain, packaging, sales and marketing, medical and regulatory services. In the UK, Ashfield (among other services) supplies sales representatives (sales reps) to pharmaceutical companies on a Contract Sales Organisation (CSO) basis.
2. **Celesio AG** (Celesio) is a company incorporated in Germany. The UK Pharmexx business is held by **Pharmexx UK Limited** (Pharmexx), a former subsidiary of Celesio. Among other services, Pharmexx supplies sales reps to pharmaceutical companies on a CSO basis. Pharmexx's UK turnover for the year ended 31 December 2011 was £8,644,000.

## **TRANSACTION**

3. Pursuant to a Sale Agreement dated 25 July 2012 United Drug agreed to acquire Pharmexx and its subsidiary companies for an estimated cash consideration of €28.7m.<sup>i</sup> The transaction was completed on 20 November 2012.
4. The OFT became aware of the transaction through an own-initiative investigation commenced by the OFT's Mergers Intelligence Unit.

5. United Drug and United Care Limited gave initial 'hold separate' undertakings under section 71 of the Enterprise Act 2002 (the Act) which were accepted by the OFT on 5 December 2012.
6. The administrative deadline for OFT to make a decision in this case is 24 December 2012.

## **JURISDICTION**

7. As a result of this transaction United Drug and Pharmexx have ceased to be distinct. The parties overlap in the supply of outsourced sales reps to pharmaceutical companies with an estimated share of supply of [45 – 55] per cent in the UK. The share of supply test in section 23(3) of the Enterprise Act 2002 (the Act) is met. The OFT believes that it is or may be the case that a relevant merger situation has been created.

## **MARKET DEFINITION**

### **Introduction**

8. The parties submitted that they overlap in the supply of sales reps to pharmaceutical companies, acting as CSOs.<sup>1</sup> These sales reps are employed directly by the CSO company, on a permanent basis, and are supplied to pharmaceutical companies to promote a particular product(s) to primary and secondary healthcare professionals<sup>2</sup> under a contract between the pharmaceutical company and the CSO company typically lasting between 12 - 24 months.
9. The demand of pharmaceutical companies for CSO sales reps (as opposed to permanent or temporary sales reps employed directly or through recruitment agencies) is driven by their need for flexible staff to promote products over different phases of a product's life, particularly at the launch of a product, and to take advantage of peak times (for example, during spring/summer for hay fever drugs).

<sup>1</sup> The parties also overlap in the supply of nurse advisors (nurses). However, Pharmexx only supplied [<10] nurses over the course of 2011. Therefore the supply of nurses will not be discussed further.

<sup>2</sup> These professionals will work in both the public and private sectors and will be the decision makers over the course of treatment that is prescribed to patients.

10. CSO sales reps can either be assigned to pharmaceutical companies as individual sales reps (dedicated resources) or as a team of sales reps that promote several pharmaceutical companies' products over a period (syndicated resources).<sup>3</sup>
11. CSO sales reps approach both primary and secondary healthcare professionals as specified in the contract. The mix of sales reps supplied under the contract will vary depending on the nature of the product(s) being promoted and the type of professional being targeted.
12. New contracts, and renewed contracts, are awarded in a number of different ways:
  - following a competitive tendering process
  - having been renewed following renegotiation between the CSO and the pharmaceutical company as the end date of the old contract approaches<sup>4</sup>
  - having been automatically renewed if the pharmaceutical company does not terminate the contract as the end date of the old contract approaches, and
  - Having been awarded to the CSO by a pharmaceutical company directly without a tender process.

Often a CSO's sales reps will move from promoting one product to another for the same pharmaceutical company, in much the same way that permanent sales reps will do.

13. If a contract is not renewed, or renegotiated, the contract will terminate. As the termination of the contract approaches, CSOs will begin the process of redundancy/reassignment of their sales reps. CSOs will try to reassign sales reps to a new contract with a different pharmaceutical

<sup>3</sup> Pharmaceutical companies will purchase a slot of a syndicated team's time during a week (2½ days, 1½ days, or ½ day per week) where the team will be dedicated to promoting the pharmaceutical companies' product(s). Other pharmaceutical companies will purchase the remaining slots and the team will promote those companies' product(s) during those slots.

<sup>4</sup> Pharmaceutical companies will often take the opportunity of contract renegotiation to benchmark the level of service and cost of the CSO against its competitors.

company, or – potentially – within their syndicated team.<sup>5</sup> Where reassignment of all the affected sales reps is not possible, after a short time period (typically one month) CSOs will make redundant those sales reps they have been unable to reassign.

14. Similar processes will be put in place when a pharmaceutical company reduces the number of sales reps it hires from a CSO.

## **Product market**

15. The relevant product market is identified primarily by considering the response of customers to an increase in the price of one of the products of the merger firms (demand-side substitution).<sup>6</sup> A set of substitute products (a 'candidate market') will satisfy the hypothetical monopolist test if a hypothetical firm that was the only present and future seller of the products in the candidate market would find it profitable to raise prices. Under this framework, a candidate market will fail the hypothetical monopolist test, and will be too narrow to comprise the relevant market, if customers would respond to the price rise by switching to products outside the set to such an extent that the price increase by the hypothetical monopolist would not be profitable.<sup>7</sup>
16. The parties overlap in the supply of outsourced sales reps to pharmaceutical companies. The OFT has considered whether the market should be wider than outsourced sales reps and should include other sales reps employed by pharmaceutical companies (either self-recruited or recruited through traditional recruitment agencies).
17. The OFT has also considered whether the frame of reference is narrower than the 'supply of outsourced sales reps'. In particular, the OFT examined whether:
  - syndicated and dedicated sales reps are in the same relevant market (the parties only overlap on the supply of dedicated sales reps)
  - generalist and specialist sales reps are in the same relevant market (the parties overlap in the supply of both), and

<sup>5</sup> CSOs will also empower sales reps to find alternative employment.

<sup>6</sup> Merger Assessment Guidelines paragraph 5.2.7.

<sup>7</sup> Merger Assessment Guidelines paragraph 5.2.10.

- Traditional and remote sales reps are in the same relevant market (the parties overlap in the supply of both).

### Sales reps on pharmaceutical companies' headcount

18. The parties submitted that sales reps directly employed by pharmaceutical companies are substitutable as pharmaceutical companies can readily switch from the use of outsourced sales reps to direct employment. The parties further argued that a small but significant worsening of the terms on which CSOs supply outsourced sales reps would lead pharmaceutical companies to terminate contracts with CSOs and to substitute towards the use of directly employed sales reps.
19. OFT guidance on this says that when the OFT considers whether self-supply should be included in the relevant market, it will generally follow the principle that captive production by firms will be included only if it can be demonstrated that it would be profitable for the supplier to forgo its use and sell into the merchant market in response to a SSNIP.<sup>8</sup>
20. The majority of views expressed by third party customers did not mention self-supply as a viable option in response to an across the board price increase. Two third party customers mentioned self supply as one of a number of secondary options and one of them would potentially consider after their primary option of renegotiation of the price increase.
21. Third party customers also considered that the main reason they decide to recruit sales reps from CSOs, rather than increase their headcount, is their need for flexibility in the number of sales reps they employ. This flexibility is particular important as the launch of a new product is accompanied by the need to increase the sales reps for a temporary period and then to decrease the headcount after the launch has been completed. Employing CSO sales reps allows third party customers to flex their sales teams whilst transferring the financial and reputational risk of dealing with significant levels of redundancy to the CSO.
22. Further, third parties generally pointed out that the provision of IT and HR services by the CSO for their sales reps reduces the administrative burden of managing a sales team. Finally, some smaller third party customers

<sup>8</sup> Merger Assessment Guidelines, paragraph 5.2.20.

told the OFT that, by using CSOs, they may indirectly benefit from (part of the) scale economies enjoyed by the CSOs, for example when CSOs negotiate volume discounts when leasing a fleet of cars they may pass on some, or all, of this cost benefit to the third party customer.

23. The OFT has not found it necessary to conclude on whether pharmaceutical companies' own sales staff are included in the relevant market. In this case the OFT has taken a cautious approach and considered this merger on the basis of sales reps supplied by CSOs as being separate from the pharmaceutical companies' own headcount.

### Syndicated and dedicated sales reps

24. The OFT examined the possible distinction between dedicated and syndicated CSO sales reps:
- Dedicated sales reps work full time for a pharmaceutical company, covering the same functions as the permanent sales reps employed by the pharmaceutical company.
  - Syndicated sales reps are supplied as a team, as opposed to single individuals. The team works for more than one pharmaceutical company at a time.

The parties overlap only in the supply of dedicated teams. Only United Drug and Innovex Quintiles (Quintiles) supply syndicated teams in the UK.

25. The parties' submission did not address whether they believe syndicated and dedicated sales reps are in the same market, rather, their submission focused on the supply of dedicated sales reps as this is the area in which the parties' activities overlap.
26. All third party customers told the OFT that they would not switch from syndicated to dedicated sales reps or the other way round following an increase in fees. They explained that syndicated and dedicated sales reps are not substitutable on the whole, because they are used for different purposes: syndicated sales reps are used to promote a more standardised message, whereas dedicated sales reps are used when the promotion needs a higher degree of personalisation.

27. Syndicated sales reps are typically less experienced and/or less qualified than dedicated sales reps and the latter are considerably more expensive than syndicated teams.
28. OFT will generally determine the product market by reference to demand-side substitution alone. However, the OFT may aggregate several narrow relevant markets into one broader one on the basis of considerations about the response of suppliers to changes in prices.<sup>9</sup> It may do so when the same production assets can be used to shift capacity between the production of different products and the same firms compete to supply the different products and the conditions of competition are the same for each product. OFT guidance provides the example of markets characterised by bidding and tendering processes as being ones where the OFT may aggregate products which are not demand-side substitutes.<sup>10</sup> In such markets, firms bid on the basis of the service they can offer to supply customers with bespoke products.<sup>11</sup>
29. Considering the above, on the supply-side, the OFT found that the same firms do not compete to supply dedicated and syndicated sales reps. Whilst all firms supply dedicated sales reps, only two companies, namely United Drug and Quintiles, supply syndicated sales reps. One third party competitor explained that only large CSOs can supply syndicated sales reps because the impact of the risk of having the syndicated team not employed for a significant period of time is prohibitive.
30. The OFT has not found it necessary in this case to conclude on whether dedicated sales reps are in the same market as syndicated sales reps. Accordingly, the OFT has considered this merger on the cautious basis of dedicated sales reps being in a separate market from syndicated sales reps.

### Generalist and specialist dedicated sales reps

31. In their submission the parties did not discuss separate markets for specialist and generalist sales reps.

<sup>9</sup> Merger Assessment Guidelines, paragraph 5.2.17

<sup>10</sup> Merger Assessment Guidelines, paragraph 5.2.18.

<sup>11</sup> The competitive constraint on firms in this case comes from a customer's willingness to award the contract to a rival rather than to switch to a different bespoke product.

32. Generalist sales reps are used to promote pharmaceutical products to primary care providers, mainly to GPs. Typically they will be dedicated sales reps at the early stages of their career (as well as syndicated sales reps). For promotions involving more straightforward drugs and applications and/or where a large proportion of the target audience includes primary healthcare professionals (such as GPs), a higher proportion of junior sales reps (dedicated generalists and syndicated teams) will normally be used; for promotions involving more complex drugs and applications and/or where a large proportion of the target audience includes secondary healthcare professionals (such as hospital consultants), a higher proportion of more senior or experienced sales reps (dedicated specialists) will normally be used.
33. The need for more experienced sales reps is driven by factors such as the more complex nature of the product, the longer time spent with the client and more in-depth discussions of the properties of these products.
34. Most third party customers indicated that specialist sales reps are not substitutable with generalists. Generalists could be substituted by specialists but third party customers told the OFT that this would hardly be economically viable due to the higher wage of the latter.
35. On the supply-side, however, the OFT considers that CSOs use the same recruitment team to recruit both specialist and generalist sales reps. Therefore, CSOs can switch resources from recruiting one type of resource to the other upon customers' demand. Further, all CSOs provide both generalist and specialist sales reps. All third party competitors agreed that they had equal opportunity to recruit high quality specialists, and did not identify the supply of dedicated sales reps, however composed between specialist and generalist sales reps, as a form of CSO specialisation.
36. It is not necessary in this case for the OFT to reach a conclusion on whether the relevant market should include specialist and generalist dedicated sales reps since the OFT does not consider that competition concerns arise whether they are looked at separately or together. In this decision, the OFT has assessed the merger on the basis of the supply of generalist and specialist dedicated sales reps together.

## Remote and traditional dedicated sales reps

37. In their submission the parties did not discuss separate markets for remote and traditional dedicated sales reps.
38. Historically, sales reps have promoted drugs to healthcare professionals primarily in face-to-face pitches. With the increasing use of electronic communication, an increasing proportion of pitches are being made remotely, that is over the telephone or using electronic platforms such as Skype. A number of sales reps are now being recruited specifically to deliver a remote service as their primary communications channel.
39. Some third party customers told the OFT that remote representatives are not substitutable with traditional representatives. Third party competitors explained that pharmaceutical companies view both dedicated and remote reps as part of the promotional mix. The health professionals that sales reps approach are individuals: some prefer to meet sales reps in person, some to speak over the phone, others through other electronic communications.
40. On the supply-side, some third party competitors are promoting themselves as being specialist suppliers of remote sales reps. Other third party competitors do not supply remote sales reps.
41. It is not necessary in this case for the OFT to reach a conclusion on whether the relevant market should include remote and traditional dedicated sales reps since the OFT does not consider that competition concerns arise whether they are looked at separately or together. In this decision, the OFT has assessed the merger on the basis of the supply of remote and traditional dedicated sales reps together

## **Geographic scope**

42. The parties submitted that although there is a regional element to the market – in that particular assignments will be specified for a particular geographic region – the relevant geographic market is the UK as pharmaceutical companies are able to place any given assignment with any CSO active in the UK.
43. Feedback from third parties corroborates the parties' view that the market is UK in scope.

44. It may be the case that there is a regional element to the supply of sales reps, in that the recruitment in one region is not substitutable with recruitment in another region from a demand-side perspective. However, all of the main suppliers operate at national level and none of the suppliers have a particular strategic focus on one area of the UK. Further, all recruitment campaigns are advertised at national level, in national newspapers and on websites. The terms and conditions and the fees charged by CSOs do not vary across regions and all CSOs are flexible in shifting resources from one area to the other depending on the contracts with pharmaceutical companies.
45. While not finding it necessary to conclude on the geographic market in this case, the OFT has assessed this merger on a national basis.

### **Conclusion on market definition**

46. The OFT has not found it necessary to conclude on the market definition in this case. Taking a cautious approach, it has examined the merger on the basis of the supply of dedicated sales reps by CSOs to pharmaceutical companies in the UK.

## **UNILATERAL EFFECTS**

### **Horizontal issues**

47. The OFT analysed the unilateral effects of the present merger by considering the parties' combined market share and the parties' closeness of competition in all the affected overlap activities.

### **Market shares**

48. All major CSOs currently operating in the UK provided the number of sales reps that they have employed from 2008 to 2012.<sup>12</sup>

<sup>12</sup> The parties submitted that they are not aware of any systematic differences in CSOs' average per head revenues, so headcount shares should be a good estimate of turnover share. Although market shares in value are not available, third party competitors told the OFT that they charge similar margins, falling between 10 – 20 per cent. The headcount market shares therefore should reflect market shares based on profits, if not the turnover.

**Table 1: Shares of supply of dedicated sales reps in the UK (per cent)**

<b>CSO</b>	<b>Share of Supply<sup>13</sup></b>
United Drug	[35 – 45]
Pharmexx	[10 – 20]
<b>Combined</b>	<b>[45 – 55]</b>
Innovex Quintiles	[20 – 30]
Chase	[10 – 20]
Star	[0 – 10]
Apodi	[0 – 10]
North51	[0 – 10]
<b>Total outsourced reps</b>	<b>100</b>

**Note:** Shares based on headcount.

**Source:** For the parties - the parties' Informal Submission;

For their competitors - competitors have provided their own figures.

49. The merger would reduce the number of CSOs in the UK from seven to six. United Drug's closest competitor is Quintiles, with a market share in excess of 20 per cent. Chase seems to be the third company in the market, although the parties and several third parties identified Pharmexx as the number three.
50. The parties were unable to provide separate market shares for the supply of remote and traditional sales reps. From partial third party competitor information, the OFT derived that in general, remote sales reps represent a small part of CSOs' business (around 10 per cent) with some third party competitors not supplying any remote sales reps at all.
51. Data from the larger third party customers indicated that only one of these customers employ remote sales reps (this company employed [one – five] remote sales reps out of a total of [40 – 50] dedicated sales reps). In particular, one customer explained that it considers face-to-face promotion to be better accepted and more effective than telephone calls.
52. Further, some third party competitors challenged differentiating remote sales reps from other sales reps. Competitors explained that both traditional and remote sales reps would be part of their clients' promotional mix. Third party competitors believe that pharmaceutical

<sup>13</sup> Figures do not total correctly due to rounding

companies need, or prefer, not only both types of sales reps, but also for individual sales reps to be flexible and prepared to pitch to healthcare professionals either face-to-face or remotely depending on the professionals' preference and availability.

53. No third party raised concern about the supply of remote sales reps and the OFT is not aware of any reason why any supplier has a particularly strong presence in the supply of remote sales reps.
54. The OFT received data from third parties allowing it to examine market shares data over the last five years. The data showed that market shares are reasonably stable. In particular, United Drug has clearly been the number one player in the last five years and Quintiles the number two in the market, although both of these have steadily lost market share to the smaller companies over the last five years. Pharmexx, Chase and Star have been contending for third place.

### **Closeness of competition**

55. The parties submitted that the services provided by CSOs are to a large extent commoditised, meaning that each provider represents a close alternative to the others, irrespective of their scale of operations. Moreover, the nature of the outsourcing model gives significant scope for rapid expansion by providers, meaning that small firms are as well placed to compete for tenders as larger rivals.
56. However, third party competitors identified other potential sources of differentiation between CSOs. Third parties informed OFT that these factors included:
  - **Reputation:** Several third parties, both customers and competitors, identified the difficulty of establishing a reputation as a reliable agency as an important barrier for smaller CSOs to compete effectively in the market, especially in tendering for larger contracts.
  - **Financial constraints:** Third party competitors identified the assessment by pharmaceutical companies of their financial ability to meet the requirements of the contracts they tender for as a constraint on their ability to win tenders. This was identified as being particularly evident in tenders for larger contracts.

- **Training:** Third party competitors commented that they faced difficulties competing against larger and established CSOs as they had the advantage of owning training facilities where they provide training to sales reps. Smaller competitors believe this represents a cost savings for larger CSOs, as smaller competitors would need to hire space in private structures.
- **Scale economies:** Third parties generally agreed that larger CSOs enjoy scale economies partly generated by their stronger buyer power. This was exercised, for example, by being able to achieve better terms with suppliers of lease cars and other items.

57. The OFT considered the bidding data provided by United Drug as evidence of the extent to which competing CSOs provide a competitive constraint upon United Drug. Given the use of formal tenders in the industry, bidding data may provide a better insight into the competitive interaction between the parties than is reflected in overall market shares, although the OFT is also conscious that the majority of contracts in the industry are not awarded via a formal tendering process. The parties did not provide bidding data for Pharmexx.
58. The parties submitted that if United Drug was an especially strong competitor to Pharmexx, it would be revealed in the United Drug bidding data. However, in no instances has Pharmexx won a bid of a contract to which United Drug was the incumbent over the past [ ].
59. The bidding data submitted by United Drug consists of a collection of the [ ] formal tenders to which United Drug participated in the last three years.<sup>14</sup> The bidding data do not represent the majority of contracts that United Drug has in place. Informal 'pitches' (such as ball park figures or more detailed offers provided over the telephone to a customer of a rival CSO during a negotiation between the customer and the rival CSO for the renewal of the contract) represent the majority of the (formal and informal) occasions for competitors to exert their competitive constraint upon the parties. However, based on its market testing exercise the OFT

<sup>14</sup> The parties also submitted a number of contracts that were renewed following renegotiation with the pharmaceutical company, but this data was incomplete – in particular it did not contain any data on who the pharmaceutical company had benchmarked United Drug against – so the below comments only relate to the bidding data received from formal tenders.

does not consider that the options for customers via this route differ from the formal tender route.

60. The bidding data shows that Quintiles is the competitor that most often bids against United Drug (in [ ] per cent of bids), followed by Pharmexx (in [ ] per cent of bids). The other CSOs follow with Chase ([ ] per cent), Apodi ([ ] per cent), North 51 ([ ] per cent) and Star ([ ] per cent).
61. In terms of the value of bids won, Quintiles (which won [ ] per cent of the bids lost by United Drug) is the main competitor, followed by Apodi ([ ] per cent of the bid value lost by United Drug) and then Pharmexx ([ ] per cent of the bid value lost by United Drug).<sup>15</sup> Of the [ ] bids that United Drug entered over the period, it lost [ ]. Of these, Pharmexx was successful in winning a number ([ ]) of smaller contracts (indeed, it was the single most successful bidder in terms of the number of contracts won) but, even so, collectively other bidders were more successful than Pharmexx (on the number of contracts won) by a factor of [ ].
62. The OFT notes that Apodi won one of the largest contracts (78 sales reps) in 2012, having contracts to supply a total of [ ] sales reps in 2013. This suggests that even smaller existing players can compete effectively against larger CSOs.
63. Third party customers informed OFT that they consider most CSOs as potential suppliers. In particular, six out of nine third parties had considered at least four potential CSOs as suppliers in the last three years. Not all of these customers have formally tendered contracts in the last three years. This indicates that the competitive constraints that apply to the formal tenders also apply to the majority of contracts awarded by more informal means.
64. In addition, third party customers generally identified Quintiles as United Drug's closest competitor and United Drug as the market leader, in line with market share and bidding analysis.

<sup>15</sup> The calculation of the percentages does not account of where two CSOs teamed up for a bid. Instead, it attributes the value of the bid to both, therefore double counting the importance of the bid. However, results would not change considerably by accounting for such distortion.

## **BARRIERS TO ENTRY AND EXPANSION**

65. The parties submitted that there are few barriers to entry and that start-up capital investment is very low. The parties recognised that there are some issues for new entrants in relation to building up contacts within pharmaceutical companies, but argued that such knowledge is not a rare commodity as there are many individuals who work in the industry who have an extensive network of contacts.
66. The parties submitted evidence of new entry into the market which had occurred over the last ten years. In that period four CSO companies have entered the market and successfully competed with more established CSOs for contracts. Evidence was also presented that smaller CSOs can compete for and win larger contracts and hence expand in the market. The parties also pointed out that:
- a number of these new entrant CSOs were launched with little evident start-up capital
  - some new entrant CSOs had initially operated out of domestic premises, thus reducing start-up costs, and
  - there are no capacity constraints that would limit new entrants' ability to compete for contracts of all kinds as:
    - CSOs recruit any new sales reps needed to fulfil their contracts only after the contract is awarded, and
    - all CSOs have equal access to the same pool of candidates.
67. Third parties identified that a CSO's reputation for successful delivery of past contracts was very important. Pharmaceutical companies, according to several third party competitors, are reluctant to hire companies without a proven track record as a successful CSO, which cannot be achieved without the assignment of CSO contracts. The OFT, however, found evidence that reputation does not need to be gained by operating as a CSO but can be gained through other means. For example, a number of current CSO companies were launched by former pharmaceutical companies' HR directors, with an established reputation in the market; similarly, large traditional recruitment agencies may have the reputation required.

68. Financial constraints also appear to be less significant as most assets (such as fleet cars and laptops) will be leased only following the award of a contract.
69. In terms of recent entry and expansion, Apodi entered in 2010 and quickly built up a share of supply of around [0 – 10] per cent. The bidding data, discussed above, show that Apodi is a key competitor in the industry which has been corroborated by some customers. Indeed, Apodi has recently won a significant contract (paragraph 62). This contract has made Apodi's share on a par with Pharmexx's.
70. In addition, the parties submitted that Chase has expanded as well, winning a contract for [ ]. Indeed, the parties' bidding data show that Chase has been successful in winning the [one – 10]<sup>th</sup> and [one – 10]<sup>th</sup> largest contracts that United Drug competed for (Quintiles and Apodi won [one – 10] of the top [one – 10] contracts).
71. The parties submitted that they were not aware of any individuals or businesses that are planning to enter the market, but argued that there are two realistic avenues where future entry could develop. Firstly, a number of current CSO companies were started by an individual or small group with good contacts in, and knowledge of, the pharmaceutical sales market.<sup>16,17</sup> Secondly, traditional recruitment agencies have the transferable skills to be able to set up CSOs. The parties argued that there are many recruitment agencies that already operate in the market as very small players with less than five sales reps and managing one or two small contracts.<sup>18</sup>
72. The OFT therefore considers that barriers to expansion are low. The OFT has not found it necessary to conclude on whether barriers to entry are low in this case.

<sup>16</sup> Two potential sources were mentioned - Individuals who have managed sales teams for pharmaceutical companies, or, individuals who have management experience within CSOs.

<sup>17</sup> The parties gave examples of Pharmexx and Apodi whose founders had come from pharmaceutical companies or CSOs.

<sup>18</sup> The parties gave examples of Chase, Star and North 51 who were originally recruitment agencies.

## **BUYER POWER**

73. The parties submitted that pharmaceutical companies have considerable buyer power. The parties explained that pharmaceutical companies select CSOs through competitive tenders where CSOs are often required to provide a breakdown of costs and to make their margins explicit. Further, pharmaceutical companies hire sales reps themselves and therefore are knowledgeable about the cost incurred to recruit and manage these resources. Pharmaceutical companies are therefore well placed to threaten to switch demand to another competitor or to self-supply.
74. Third party customers generally recognised that they enjoy some degree of buyer power.
75. Some third parties told the OFT that pharmaceutical companies run transparent competitive tenders where a full breakdown of costs is communicated to the pharmaceutical companies. Further, the parties submitted, supported by third party competitors, that pharmaceutical companies, upon selection of a winner and when renewing a contract, negotiate with the supplier on single cost items to obtain reductions and compare the costs submitted by one bidder with the costs submitted by the others to obtain discounts.
76. The parties further submitted that there are only around 60 potential customers for CSOs and the vast majority of CSO services are supplied to approximately 20 large, sophisticated and professional pharmaceutical companies. CSOs are reliant on maintaining the best possible relationship with this small customer base as they risk destroying their customer base if they alienate customers.
77. However, given that no competitive concerns arise as a result of the merger, it has not been necessary for the OFT to conclude on the extent of countervailing buyer power.

## **THIRD PARTY VIEWS**

78. The OFT received comments from customers and competitors of the parties. Third party views have been discussed in other parts of the decision where appropriate.

79. The majority of respondents indicated that they were not concerned with the merger. There were some views expressed by a minority of customers that the merger would reduce choice in the market and that an increase in fees would result.
80. However, the OFT noted that these third party customers generally considered four or five CSOs as potential suppliers and was not provided with any compelling evidence to support the views that price increases would result from the merger. In particular, the OFT was not provided with any evidence as to why Quintiles, Chase, Star and Apodi could not provide a competitive constraint to the merged entity after the merger.

## **ASSESSMENT**

81. The parties overlap in the supply of dedicated sales reps to pharmaceutical companies in the UK, acting as CSOs.
82. The OFT has assessed this merger on the basis of the supply of dedicated sales reps by CSOs to pharmaceutical companies in the UK.
83. The parties account for [45 - 55] per cent of the supply of dedicated sales reps in the UK. Bidding data provided by United Drug shows that Pharmexx does not represent a disproportionately strong competitive constraint and that even smaller CSOs are valid competitors. Instead, the bidding data showed that at least Quintiles, Chase and Apodi provide a competitive constraint to United Drug. This was corroborated by the majority of customer comments in the OFT's investigation.
84. The OFT considers that barriers to expansion are low.
85. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

86. This merger will therefore not be referred to the Competition Commission under section 22(1) of the Act.

OFT is happy to provide the following clarification at the request of United Drug:

<sup>i</sup> €28.7m is the purchase price for the entire Pharmexx Group