

Completed acquisition by Amcare Limited of Surecalm
Healthcare Holdings Limited

ME/5422/12

The OFT's decision on reference under section 22(1) given on 27 June 2012. Full text of decision published 6 July 2012.

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. Amcare Limited (Amcare) distributes ostomy and urology products and provides related services to patients in the home on a UK-wide basis. Amcare is part of the ConvaTec group (ConvaTec), a global developer, manufacturer and supplier of medical technologies. Amcare owns the Trent and Farnhurst brands.
2. SureCalm Healthcare Holdings Limited (SureCalm) distributes ostomy and urology products and provides related services to patients in the community channel¹ on a UK-wide basis. SureCalm's UK turnover for the financial year ending 31 March 2011 was £[]million.

TRANSACTION

3. On 29 February 2012, Amcare acquired SureCalm for £[]million. Notice of the deal was made public on 2 March and thus the statutory deadline pursuant to section 24 of the Enterprise Act 2002 (the Act), as extended, is 18 July 2012. The OFT commenced its own-initiative merger investigation on 7 March 2012. The administrative deadline is 27 June 2012.

¹ The 'community channel' refers to homes or care homes.

JURISDICTION

4. As a result of this transaction Amcare and SureCalm have ceased to be distinct. The parties overlap in the supply of ostomy and urology products and related services in Great Britain. The parties submitted that the parties' combined share of supply of ostomy and urology products exceeds 25 per cent in the [] Strategic Health Authority (SHA) areas. Therefore, the OFT considers that the share of supply test in section 23 of the Act is met in this case. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

MARKET DEFINITION

5. The parties overlap in the provision of the following product categories and related services in the community channel in Great Britain:
 - Ostomy products,
 - Urology products, and
 - wound care products.
6. An ostomy refers to a surgically created opening in the body for the discharge of body wastes. A stoma is a portion of the large or small intestine that has been diverted away from its normal route, and redirected onto the abdomen. The stoma, or opening, allows the contents of the bowel or bladder to empty into a pouch attached to the abdomen. The location of the opening depends upon the type of surgery. The most common specific types of ostomies include colostomy, (temporary or permanent), ileostomy, and urostomy.² Ostomy products include catheters, wound drainage pouches and vacuum pumps.
7. Urology deals with diseases of the kidneys and urinary tract. Urological conditions include prostate cancer, kidney damage, and incontinence. Other diseases include bladder cancer, testicular cancer, kidney stones, interstitial cystitis, and urinary tract

² www.convatecstomacare.co.uk/what-to-expect/stoma-basics/what-is-a-stoma/

infections.³ Urology products include items such as urethra catheters and stents.

8. Wound care products include items such as bandages, gauzes, and hydrocolloids.
9. Ostomy and urology products are dispensed via Dispensing Appliance Contractors (DACs) and pharmacies (either via NHS or private prescription). DACs dispense the bulk of ostomy products (around 75 per cent) and around half of urology products. All DACs and pharmacies are required to be licensed suppliers of prescribed medical appliances,⁴ as set out in Part IX of the NHS Drug Tariff.⁵ The OFT understands that DAC licences are granted by Primary Care Trusts (PCTs) following a 'Pharmaceutical Needs Assessment'. DAC licences are granted in perpetuity. Despite being granted by a local body, DAC licences allow DACs to provide services across the whole of the UK.
10. Amcare submitted that no new DAC licences have been issued for many years (but did not specify how many years). It also submitted that the bulk of new entry occurs as a consequence of existing licences being transferred to another operator. It estimated that there are currently around 22 DAC operators in the UK, although a single DAC may own several licences.

Product scope

11. The OFT's approach to product market definition is generally to consider first if narrow candidate markets can be widened through substitution on the demand-side. If appropriate, the OFT then considers if substitution on the supply-side allows several products, which are not demand-side substitutes, to be aggregated into one wider market.⁶

³ www.theurologyfoundation.org/what-is-urology/

⁴ DACs are subject to a broad range of regulation, including, inter alia: The National Health Service (Pharmaceutical Services) Regulations 2005, The National Health Service Act 2006, and The National Health Service (Pharmaceutical Services) (Appliances) (Amendment) Regulations 2009.

⁵ www.ppa.org.uk/ppa/edt_intro.htm .

⁶ See the OFT/CC *Merger Assessment Guidelines*, September 2010 (OFT1254), paragraphs 5.2.6 to 5.2.19.

12. Although Amcare and other DACs are licensed via a DAC licence to supply a broad range of prescribed appliances, it submitted that the relevant product scope is the distribution of ostomy and urology products and the provision of related services by DACs and pharmacies in the community channel.
13. The OFT considers in the following section whether the type of product supplied, the care setting, and other distribution channels, namely pharmacies are of relevance to the product scope.

Type of product supplied

14. The parties submitted that a patient's choice of ostomy or urology product is heavily influenced by advice from medical practitioners which in turn is related to their specific condition. While, for a given condition, there may be a number of suitable products which could be prescribed (for example, similar products made by different manufacturers),⁷ ostomy and urology products are unlikely to be demand-side substitutes as they are used for different purposes. Amcare submitted that DACs have a limited ability to determine patient choice of product.
15. In addition, consistent with previous cases⁸ in upstream markets, segmentation by narrower product markets may be appropriate for similar demand-side reasons.
16. The OFT understands that the licence conditions of DACs stipulate that they must supply all products listed in Part IX of the NHS Drug Tariff, including a broad range of ostomy and urology products. To the extent that DACs do not have the products in stock, the medical product wholesalers exist which can supply DACs with a broad range of ostomy and urology products at short notice. As a consequence, on the supply-side, further segmentation by product category is not necessary in this case.

⁷ For example, there are 11 manufacturers of two-piece ostomy products listed in the NHS Drug Tariff.

⁸ ME/2472/06 Completed acquisition by Coloplast A/S of the Urology Business of Mentor Corporation (www.offt.gov.uk/OFTwork/mergers/decisions/2006/coloplast): Coloplast A/S and SSL International plc: A report on the merger situation, Competition Commission, 2002: EC Case No COMP/M.5190 Nordic Captial/ Convatec.

17. The OFT notes further that, while DACs must supply the full range of stoma appliances and related services stipulated in the relevant NHS regulations, they have tended to specialise on broad product categories, such as the supply of ostomy products and related service or the supply of urology products and related services. The OFT is not aware that DAC specialisation extends to specific product types within broader product groups.

Care setting

18. Healthcare product distribution markets broadly relate to two different care settings: the hospital channel and the community channel (patient homes, care homes and nursing homes). Amcare submitted that the product scope should focus on the community channel only in this instance.
19. DACs are primarily involved in supplying ostomy and urology products and related services to patients in the home. The OFT understands that separate procurement arrangements exist for distribution of such products in the hospital channel. No evidence was submitted which suggested the parties are key suppliers of ostomy or urology products in the hospital channel. No third parties commented on this aspect.
20. Accordingly, the OFT has taken a cautious approach and assessed the transaction in relation to the community channel only.

Pharmacies

21. Amcare submitted that pharmacies should be included in the product scope because:
 - patients are free to use either a DAC or pharmacy, to provide ostomy and urology products,
 - patients can and do switch between DACs and pharmacies,
 - pharmacies offer a holistic set of services for a broad range of medical requirements, whereas DACs are specialist operators (for example, DACs are unable to dispense prescribed medicines), and

- pharmacies and DACs are subject to the same regulation in terms of the services they must provide.
22. Third party competitors also broadly supported the inclusion of pharmacies in the product market.
23. However, the OFT considered the views put forward by third parties, that there are a number of reasons, both demand-side and supply-side, why pharmacies ought to be excluded from the product market. Third party comment received by the OFT was that:
- the physical storage space in an average pharmacy is inadequate to store large boxes of stoma/urology products,
 - DACs provide patient certain value-added services such as customised bag cutting service and free of charge items like disposal sacks, de-odourisers and educational support brochures, advice and information through call centres. Some larger DACs often employ specialist stoma nurses. Pharmacies do not provide the majority of these value-added services, and
 - DACs also provide confidentiality (in the form of courier delivery services) which may not be guaranteed at the pharmacy.⁹
24. In addition, the OFT notes that the share of total stoma products dispensed by pharmacies has decreased from over 60 per cent in 1993 to around 25 per cent today.¹⁰ This decline has been mirrored by a rise in share of supply of stoma products by appliance contractors.
25. As a consequence, the OFT has not included pharmacies in the product scope on a cautious basis but will take account of the competitive constraint they pose in the substantive assessment.

⁹ The OFT accepts that pharmacists may easily be able to obtain delivery services but the same level of confidentiality may not be achievable within the pharmacy environment.

¹⁰ Consultation document on the arrangements for paying appliance contractors, Department of Health, June 2003 and Amcare data on current market shares.

Conclusion on product market

26. The OFT has not found it necessary to conclude on the product market in this case but instead has taken a cautious approach and assessed the merger on the basis of:
- the supply of ostomy products and related services by DACs in the community channel,
 - the supply of urology products and related services by DACs in the community channel, and
 - the supply of wound care products.

Geographic Frame

27. The Merger Assessment Guidelines¹¹ state that 'in cases where prices (and sometimes delivery costs) are listed, rather than being subject to negotiation, a relevant geographic market may be based on the location of suppliers and if so would be defined as an area covering a set of suppliers or outlets that customers consider to be substitutes for the supplier or outlet of interest.'
28. In both a previous OFT decision¹² and a previous Competition Commission decision¹³ the geographic scope was the UK. In both of those instances, having consulted with the relevant authorities in England, Wales, Scotland and Northern Ireland, it was decided that as the supply arrangements and underlying regulations in the four separate health administrations were very similar, and it was not necessary to narrow the geographic scope any further.
29. In this case, Amcare submitted that the relevant geographic market is Great Britain (that is, England, Scotland and Wales). Amcare estimates that 99 per cent of business through DAC licensed premises occurs via telephone or post and that, as a consequence, DACs can and do deliver products via courier or post over long distances. Amcare states further that even smaller DACs which may

¹¹ See the OFT/CC *Merger Assessment Guidelines*, September 2010 (OFT1254), paragraphs, section 5.2.22

¹² www.of.gov.uk/OFTwork/mergers/decisions/2006/coloplast.

¹³ Coloplast A/S and SSL International plc: A report on the merger situation, Competition Commission, 2002.

have a regional focus will often have sales outside their usual area of business and can operate on a nationwide basis.

30. Amcare also submitted that sales of ostomy and urology products by DACs in Northern Ireland are not material. Moreover, it states there is no overlap in respect of Northern Ireland because SureCalm has [0-5 per cent] sales into the region. Amcare makes a small amount of sales into Northern Ireland – in the year to February 2012, it made around £ [] of sales into Northern Ireland.
31. The OFT understands that, while technically covered by separate legislation and processes, both the Welsh health authorities' and Scottish Executive's approach to regulation of appliance contractors is similar to that in England. However, the parties told the OFT that a DAC supplier need not restrict itself to its home country, for example a DAC licence, issued by an English PCT, permits the licence holder to supply ostomy and urology products throughout the UK.
32. Third party competitors highlighted that a number of smaller DACs may operate in more local areas. One third party informed the OFT that some small DACs operate on a more local basis, often linked to particular hospitals and their subsequent geographic footprint. However, it believed competition generally occurred at a national level.
33. The OFT did not receive any third party concerns relating to specific regions within the UK. Nor did the OFT receive any evidence which indicated that a structural impediment exists which might affect the ability of DACs, particularly those operating nationally, to compete effectively in specific SHA regions. Indeed, the majority of third parties considered the relevant frame of reference to be a national one.
34. The OFT has not found it necessary to conclude on the geographic market in this case. Notwithstanding the ability of DACs located outside Northern Ireland to supply patients within it, the OFT has assessed this transaction using a cautious geographic frame of Great Britain (that is, excluding Northern Ireland).

Conclusion on frame of reference

35. The OFT has undertaken its substantive assessment of the transaction in relation to:

- the supply of ostomy products and related services by DACs in the community channel in Great Britain,
- the supply of urology products and related services by DACs in the community channel in Great Britain, and
- the supply of wound care products in Great Britain.

HORIZONTAL ISSUES

36. Amcare submitted that unilateral effects will not arise as a consequence of the merger and that the merged entity will face significant competition post-merger, because:

- the market is highly regulated,
- the market is fragmented, and,
- there are a number of significant market players, including;
 - several large scale vertically integrated DACs,
 - smaller DACs which compete in the market, and
 - pharmacies, which offer 'strong competition'.

37. Amcare submitted that the market shares of the parties and third parties for the supply of ostomy products and related services in Great Britain are as shown in Table 1 below. Third parties corroborated the parties' markets shares.

Table 1: Estimated shares of supply of ostomy products and related services in Great Britain.

DAC	Amcare estimated share (per cent)
Amcare (DAC of ConvaTec)	[5-10]
- Trent	[0-5]
- Farnhurst	[0-5]
SureCalm	[5-10]
Parties combined	[20-30]
Charter (DAC of Coloplast)	[20-30]
Fittleworth (DAC of Hollister/Dansac)	[20-30]
SecuriCare (DAC of Clinimed)	[10-20]
Salts Medilink	[5-10]
Others	[10-20]

Source: Amcare

38. The OFT considers that the combined entity has a market share in the region of [20-30] per cent of the supply of ostomy products and related services by DACs in the community channel in Great Britain. The increment is around [5-10] per cent. Such market shares are not ordinarily of a level which would give rise to competition concerns. Sizeable competitors will remain post merger, namely Charter, Fittleworth and SecuriCare.

39. Moreover, pricing of NHS prescription products are set by the NHS through the drug tariff,¹⁴ and since the pricing is set it is unlikely that the merger will result in a price increase for NHS patients. Competition between DACs occurs on other dimensions, such as customer service levels, product availability and delivery efficiency.

40. Third parties told the OFT that the range of non-price factors on which DACs compete typically comprise:

- community nursing provision,
- customer support services, including telephone advice lines

¹⁴ www.ppa.org.uk/ppa/edt_intro.htm and www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/@sta/@perf/documents/digitalasset/dh_110726.pdf pages 12-18

- complimentary items,
- advertisements in patient association magazines and publications,
- patient open days, and
- healthcare professional referrals (with sponsorship arrangements viewed as a useful arrangement for some DACs to increase potential referrals).

41. The parties submitted that the larger DACs operating on a national basis are more effective than smaller DACs, competing on non-price factor.
42. In addition, the OFT understands that the larger DACs are more likely to be able to afford sponsorship agreements with NHS Trusts. The parties submitted that a common feature of the ostomy market is sponsorship agreements between stoma product manufacturers and NHS Trusts, or between DACs and NHS Trusts. Such sponsorships, the OFT was told, typically pay for the provision of specialist ostomy nurses. Amcare submitted that sponsorship agreements are a key means by which DACs and manufacturers of ostomy products compete for custom from patients, given the 'gatekeeper' role nurses play in advising patients.
43. One third party informed the OFT that such national operators were more likely to be able to afford their own specialist community nurses alongside sponsorship agreements with NHS Trusts. It considered that both sponsorship agreements and community nurses put national operators at a distinct competitive advantage compared to smaller DACs.
44. Given the third party comments above and the parties submission on sponsorship, the OFT consider that the merged entities key competitors will be the large national DAC, namely Charter, Fittleworth and SecuriCare.
45. This is confirmed by internal documents which indicate Amcare's business strategy is []. Coloplast and Hollister/Dansac themselves operate DACs – Charter and Fittleworth respectively. The parties'

internal documents show that ConvaTec does not consider SureCalm to be a key competing DAC.

46. Third parties did not consider the parties to be close competitors.
47. The OFT considers, on the basis of the available evidence, that while both parties compete in the market for the supply of ostomy products and related services in the community channel, they are not close competitors. Indeed, the OFT's investigation has found that after the merger the merged entity will face competition from Charter, Fittleworth and SecuriCare.

Barriers to entry and expansion

48. When assessing possible supply-side responses, including entry, expansion and repositioning, the OFT will consider whether the response would be timely, likely, and sufficient.¹⁵ In terms of timeliness, the guidance suggests that the OFT will look for entry to occur within two years.
49. Amcare told the OFT that the barriers to entry were low and that a DAC licence could be acquired for as little as £[]. The OFT notes that the parties submit no new DAC licence has been issued in recent years and that the sole entry route into the DAC market is via the acquisition of an existing DAC licence or business.
50. The OFT understands that a DAC licence is a necessary but not sufficient condition of operating a DAC business. The OFT understands that a customer address list is a valuable part of a DAC business. Amcare told the OFT that the cost of a customer address in addition to a DAC would be broadly equivalent to the acquisition of a DAC business and cited the purchase price for two recent acquisitions it had undertaken of DAC businesses, Farnhurst and Trent, on a per licence cost.

¹⁵ See the OFT/CC *Merger Assessment Guidelines*, September 2010 (OFT1254), paragraph 5.8.3.

51. The OFT considers that significant investment may be required to build a customer address list from scratch, or to acquire an existing DAC business. As such, barriers to entry may be significant.
52. Amcare indicated that it []. However, no compelling evidence was submitted to the effect that the OFT could rely on this statement for the purposes of its merger assessment.
53. Third party competitor DACs agreed that obtaining a DAC licence was the main barrier to entry. Although one third party competitor stated that sponsorship agreements and company nurses are the main barriers to entry for new market entrants. It considered the investment necessary – between £40,000 and £300,000 for each agreement – to be high for a new entrant, but the only way to compete on anything other than the periphery of the market.
54. The OFT's assessment did not reveal any specific entry or expansion plans.

Summary

55. Based on the information available to it, the OFT does not believe the transaction gives rise to a realistic prospect of a substantial lessening of competition (SLC) in the market for the supply of ostomy products and related services in the community channel.

Supply of urology products and related services in the community channel

56. The parties submitted their estimated market shares for the supply of urology products and related services in Great Britain as shown in Table 2 below.

Table 2: Estimated shares of third party urology suppliers in Great Britain.

DACs	Amcare market share estimate (per cent)
Amcare	[0-5]
SureCalm	[0-5]
Parties combined	[0-5]
Charter (Coloplast)	[30-40]
Fittleworths	[20-30]
Script Easy (Rochester)	[5-10]
Select (Astra Tech)	[5-10]
Braun (Emerald)	[0-5]
Bullens	[0-5]
Other DACs	[10-20]

Source: Amcare

57. Amcare estimated its combined share of supply based on DAC suppliers only is [0-5] per cent, with an increment of [0-5] per cent. Such market shares are not ordinarily of a level which would give rise to competition concerns.
58. Based on the information provided to the OFT in the table above, it appears likely that the merger parties will face significant competition from a number of alternate suppliers of urology products in the community channel and that the merger will not result in a realistic prospect of an SLC.
59. In addition, the OFT notes that, unlike the market for the supply of ostomy products in the community channel, pharmacies account for a significant proportion of total products sales. According to the IMS¹⁶ product sales data provided by Amcare, pharmacies account for around 55 per cent of total urology supplies. Pharmacies may act as a stronger constraint on the parties post-merger in relation to the supply of urology products in comparison to the position with respect to the supply of ostomy products.

¹⁶ IMS is a third party market research firm with an estimated 80 per cent market coverage.

60. No third parties raised any concerns about the merger in relation to the market for the supply of urology products in the community channel in Great Britain. One third party commented that they considered the parties' combined market share for the supply of urology products and related services to be negligible.
61. Based on the evidence available to it, the OFT does not believe the transaction gives rise to a realistic prospect of an SLC in the market for the supply of urology products and related services in the community channel in Great Britain.

The supply of wound care products in Great Britain

62. Amcare submitted that the market shares of Amcare and SureCalm are low in relation to the supply of wound care products (for example bandages, gauzes and hydrocolloids) and that the increment is negligible. Amcare informed the OFT that its sales of wound care products were £[]million in 2011, representing a share of the total wound care market of around [0-5] per cent. SureCalm's sales in wound care in 2011 were £[], representing [0-5] per cent of the market.¹⁷ Moreover, the OFT understands that wound care products are ancillary to the main specialism of DACs, which is the supply of ostomy and urology products and related services, and such products are dispensed by a range of alternate suppliers, including pharmacists and general retailers (in the case of some wound care products).
63. Accordingly, the OFT does not consider that the merger raises a realistic prospect of an SLC with regard to wound care products.

Conclusion on unilateral effects

64. Based on the evidence available to it, the OFT does not believe the transaction gives rise to a realistic prospect of an SLC in:

¹⁷ The OFT notes that the EC segmented the wound care market in its assessment of Nordic Capital / ConvaTec – (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008M5190:EN:HTML>). The OFT notes further that the transaction concerned the manufacture of wound care products rather than their distribution. Accordingly, the OFT did not believe further segmentation would be appropriate in this case.

- the supply of ostomy products and related services in the community channel in Great Britain,
- the supply of urology products and related services in the community channel in Great Britain, and
- the supply of wound care products.

VERTICAL ISSUES

65. Several DACs are vertically integrated with manufactures of ostomy and urology products. Evidence provided by the parties indicated that vertically integrating is a key way in which manufacturers can affect market shares in the upstream market.
66. The OFT notes that part of the rationale for the transaction is an []. However, Amcare submitted that vertical effects will not arise as the transaction will not enable the merged entity to foreclose rivals at the manufacturing level, nor prevent or restrict patient choice.
67. Amcare is ultimately owned by ConvaTec, and its main competitors at the DAC level are also vertically integrated. Prior to the transaction SureCalm was not vertically integrated with a manufacturer, although it did have a trading relationship with Amcare in relation to ConvaTec.
68. ConvaTec undertakes regular market research of the UK ostomy market to assess its own market performance and its performance relative to its main competitors. That research, undertaken quarterly, indicates that Coloplast has the highest product market share at patient discharge (around [40-50] per cent), Hollister / Dansac has around [40-50] per cent market share and ConvaTec has around [0-5] per cent market share.
69. The OFT notes that Coloplast and Hollister / Dansac have higher market shares than Amcare / SureCalm at both the upstream manufacturer level and the downstream DAC level, and will continue to do so post-merger. This suggests Amcare is unlikely to gain sufficient market power at the downstream as a consequence of the transaction to foreclose rival manufacturers.

70. Moreover, the OFT notes that smaller DACs and pharmacies act as an alternate (albeit weaker and more fragmented) supply route for rival upstream manufacturers.
71. In addition, the OFT understands that there are medical product wholesalers which act as intermediaries between DACs and manufacturers, supplying a broad range of ostomy and urology products (amongst other things), for example, AAH Pharmaceuticals Limited,¹⁸ further constraining the ability for Amcare/ConvaTec to foreclose rivals.
72. The OFT does not believe there is a realistic prospect of anti-competitive vertical effects arising as a consequence of the transaction.

THIRD PARTY VIEWS

73. Third party views have been mentioned where appropriate. In addition, two third parties complained about the prevalence of sponsorship agreements in the industry, perceiving them to be anti-competitive. Non-merger specific concerns have not been considered as part of this assessment.

ASSESSMENT

74. The OFT has assessed the merger on the basis of the supply of ostomy and urology products and related services in Great Britain. It has also examined the supply of wound care products.
75. The parties' estimated combined share of Great Britain in the supply of ostomy products through DACs is around [20-30] per cent, (with an increment of [5-10] per cent). For the supply of urology products via DACs it is [0-5] per cent (with an increment of [0-5] per cent).
76. The OFT considers that the parties will continue to face strong competition from a number of DAC competitors including Charter, Fittleworth and SecuriCare in the supply of ostomy products and Charter and Fittleworth (and a long tail of smaller providers) in the

¹⁸ www.aah.co.uk/content/wholesale-0

supply of urology products. Moreover, the OFT notes that NHS prices are regulated, the key competitors are able to compete across the range of non-price factors and the parties own internal document bear this up. Third parties do not consider that the parties are close competitors.

77. The parties have a limited presence in the supply of wound care products and this does not raise competition concerns.
78. The OFT does not believe there is a realistic prospect of anti-competitive vertical effects arising because of this transaction as the parties share of the market is small and will continue to face strong competition from a number of manufacturer and DACs including Coloplast and Hollister, as well as the smaller DACs and pharmacies.
79. 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 an SLC within a market or markets in the UK.

DECISION

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