
Anticipated joint venture between GlaxoSmithKline plc and Pfizer Inc
in relation to their respective HIV businesses

ME/4136/09

The OFT's decision on reference under section 33(1) given on 9 July 2009. Full text of decision published on 21 July 2009.

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. **GlaxoSmithKline plc (GSK)** is a global healthcare company active in the discovery, development, manufacturing and sale of pharmaceutical and non-pharmaceutical products, including for the treatment of Human Immunodeficiency Virus (HIV).¹
2. **Pfizer Inc (Pfizer)** is currently the world's largest research-based biomedical and pharmaceutical company. It sells products across eleven different treatment areas, including HIV. Pfizer's UK turnover for its HIV business in 2008 was approximately [].

TRANSACTION

3. The parties propose to place the entirety of their respective HIV businesses² into a new joint venture (JV) company, GlaxoSmithKline Newco Limited (**GSK Newco**). GSK will acquire a controlling interest over

¹ The term Acquired Immune Deficiency Syndrome (AIDS), often used in conjunction with HIV, applies to the most advanced stages of HIV infections. In this decision, the acronym HIV (as defined) includes AIDS.

² Excluding HIV vaccines.

GSK Newco and Pfizer may acquire material influence over GSK Newco (although the OFT has not found it necessary to conclude on this point).³

4. The parties' rationale for the transaction is to create a specialist JV company, which will focus solely on the research, development and commercialisation of HIV medicines,⁴ with an appropriate level of independence from its parent companies to prioritise internal and external investments.
5. The merger was notified by the parties on 27 May 2009 and the administrative deadline for a decision is 22 July 2009.

JURISDICTION

6. As a result of this transaction GSK will cease to be distinct from the HIV business contributed to GSK Newco by Pfizer (and Pfizer, to the extent that it acquires material influence over GSK Newco, will cease to be distinct from the HIV business contributed by GSK). The parties' contributed businesses overlap in the supply and research and development (R&D) of HIV drugs and the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met by virtue of the contributed businesses' combined share of an all HIV market at [20-30] per cent by value.⁵
7. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

³ GSK and Pfizer have agreed an initial equity split of 85:15 respectively, which may vary depending on certain targets being met.

⁴ See: http://www.gsk.com/media/pressreleases/2009/2009_pressrelease_10041.htm

⁵ The transaction does not create a concentration with Community dimension pursuant to Article 1 of the Council Regulation 139/2004/EC on the control of concentrations between undertakings. To the extent that Pfizer does have material influence over GSK Newco, the transaction would then also qualify on the turnover test, as the combined UK turnover of the contributed businesses would be above £70 million – see paragraph 3.49 of the OFT's Jurisdictional and Procedural Guidance OFT527.

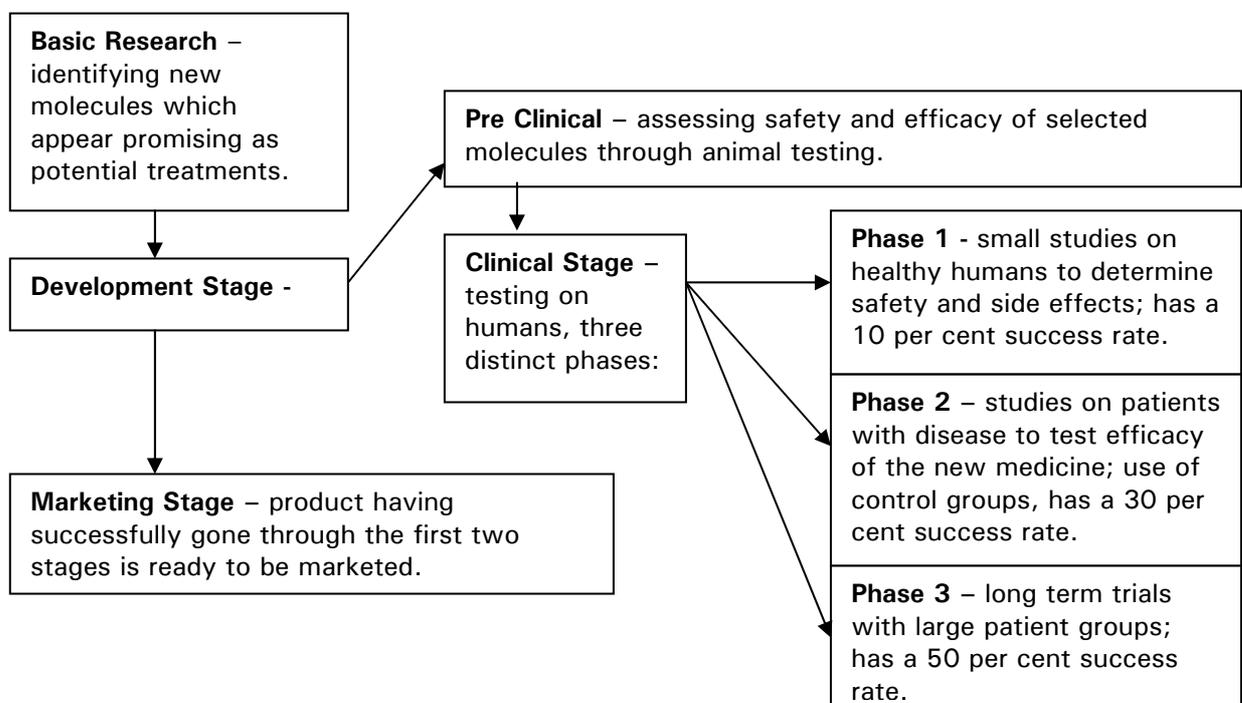
MARKET DEFINITION

Background

8. The European Commission (Commission) has considered the pharmaceutical sector in many merger cases,⁶ and in particular, the HIV therapeutic area was considered in Bristol Myers Squibb (BMS) / Dupont (DP).⁷

Product life-cycle of pharmaceutical products

9. In general, pharmaceutical products will go through three broad stages: basic research, development stage and marketing stage, as shown in the diagram below:



Treatment of HIV

10. Drugs, commonly known as anti-retrovirals, can slow or halt the progression of HIV. HIV patients undergo long-term treatments which are characterised by changes of medication as patients become resistant, intolerant or suffer from side effects as a result of a given course of drugs.

⁶ See full list at: http://ec.europa.eu/competition/mergers/cases/index/by_nace_c_.html#c21_2

⁷ Case COMP M.2517; EC decision of 9 August 2001.

11. The anti-retroviral drugs capable of treating HIV are classified under the J5C ATC categorisation,⁸ and are usually grouped into five classes:

- Nucleoside reverse transcriptase inhibitors (**NRTIs**)
- Non-nucleoside reverse transcriptase inhibitors (**NNRTIs**)
- Protease inhibitors (**PIs**)
- Integrase inhibitors (**IIs**), and
- Entry inhibitors (**EIs**), including CCR5 antagonists (**CCR5s**), and fusion inhibitors (**FIs**).

12. HIV treatments will typically include a combination of drugs known as 'highly active anti-retroviral therapy' (HAART). Both the British National Formulary (BNF) and British HIV Association (BHIVA)⁹ recommend a therapy based on:

- a backbone of two NRTIs,¹⁰ plus
- a third agent, typically an NNRTI.^{11 12}

⁸ In pharmaceutical merger cases, it is standard practice amongst established competition authorities to refer to the third level of the 'Anatomical Therapeutic Chemical' classification (ATC), compiled by the European Pharmaceutical Marketing Research Association in collaboration with International Medical Statistics, as a starting point in the definition of relevant markets. The ATC has a hierarchical structure and its third level groups medicines in terms of their intended therapeutic use.

⁹ See section 5.3.1 of the BNF and the BHIVA Guidelines for the Treatment of HIV-1-infected adults with antiretroviral therapy 2008 (at <http://www.bhiva.org/cms1222226.asp>).

¹⁰ These combinations are now available in two fixed-dose preparations, that is, Truvada (tenofovir plus emtricitabine), Kivexa / Epzicom (abacavir plus lamivudine), and Combivir (zidovudine plus lamivudine), the first product manufactured by Gilead and the second two by GSK (the latter GSK product is only recommended to specific patients). Lastly, there is a triple NRTI preparation, that is, GSK's Trizivir (zidovudine plus lamivudine plus abacavir), which, however, is not recommended by the BHIVA.

¹¹ The parties submit that over 60 per cent of patients in the UK are on a triple therapy of two NRTIs plus a NNRTI, with Truvada-Sustiva and Kivexa-Sustiva being the most prescribed combinations.

¹² NNRTIs, PIs, IIs, FIs and CCR5s are all third agents which are prescribed alongside the core backbone of the two NRTIs. The more mature of these third agents are the NNRTIs and PIs. In *Bristol Myers Squibb / Dupont* while the Commission did not conclude on constraints between PIs and NNRTIs, it did confirm that there appeared to be some substitutability between PIs and NNRTIs when in combination with two NRTIs.

13. Some groups of HIV patients have some special treatment requirements. These require other different combinations of the above classes of drugs.¹³ This means that the options for different groups of patients may vary substantially.

Product scope

Marketed HIV products

14. There are several plausible ways to segment the product scope for HIV marketed products:
- A single market for all marketed HIV drugs.
 - Each class of drugs (that is, NRTIs, NNRTIs, etc.) as a separate market, given their specific therapeutic indications.
 - A separate market for 'third agents', that is, comprising all drugs for the treatment of HIV except NRTIs (NRTIs are core drugs rather than third agents).
 - A separate market comprising drugs which are 'most often' combined with NRTIs, that is, PIs and NNRTIs only.
 - A market for 'salvage' treatments (that is, drugs which are used when patients become resistant to typical therapies), comprising drugs within the PIs, IIs and EIs/CCR5s/FIs classes.¹⁴
15. However, as the transaction does not give rise to competition concerns on any plausible market definition, there has been no need to conclude on the relevant product market for marketed HIV drugs.¹⁵

¹³ For patients who have become resistant to 'first-line' treatments (for example, two NRTIs plus a NNRTI), women wishing to become pregnant, or patients affected by psychiatric disorders, a therapy consisting of a backbone of two NRTIs plus a boosted PI is recommended. These may represent up to 30 per cent of all HIV patients. EIs (including CCR5s and FIs) and IIs are relatively new classes of drugs and are only recommended in specific cases, for example for 'experienced' patients who have already become resistant to treatment with other HIV drugs.

¹⁴ These salvage treatments are relatively new classes of drugs and are only recommended in specific cases. Roche's Fuzeon, a FI, gained approval in 2003, while Pfizer's Selzentry, a CCR5, and Merck's Isentress, an II, were approved in 2007.

¹⁵ The same conclusion applies if the product scope is segmented by distribution channels as the supply of HIV drugs takes place almost exclusively through hospitals.

Pipeline HIV products

16. The Commission has previously also considered products under R&D (pipeline products), limiting its analysis to products at Phase 3 of clinical trials. Given the differences in R&D costs and success rates across the various development stages, it could be argued that each Phase of clinical trials comprises a distinct separate market.
17. The OFT has adopted a cautious approach and has assessed the parties' overlaps in pipeline HIV products at each clinical stage as well as for all stages. This is because while the parties' main overlap is at Phase 2 of the clinical stages, this is a market particularly characterised with substantial R&D development, and so it is not appropriate to conduct the competitive assessment on a static (that is, one phase only) basis.
18. However, given the lack of competition concerns in this case there has been no need to conclude on the precise market definition in respect of pipeline HIV products.

Geographic scope

19. In previous merger cases the Commission has defined the markets for pharmaceutical products (which are currently marketed) as national in scope, because they show wide differences in terms of regulatory frameworks, pricing mechanisms, purchasing policies, and marketing strategies across Member States.
20. However, the markets for pipeline HIV products may be defined on the basis of the underlying R&D activity, which is normally global. As a result, the Commission in previous cases has defined the market for future products as at least EEA-wide or possibly worldwide in scope.
21. Neither the parties nor third parties submitted any contrary evidence to this view. Therefore, in line with previous decisions by the Commission, the OFT has assessed this merger on the basis of the geographic frame of reference for currently marketed HIV medicines being national in scope, while for pipeline HIV products being at least EEA-wide or possibly worldwide. However, given the lack of competition concerns in this case, the geographic scope of the relevant markets can be left open.

HORIZONTAL ISSUES

Unilateral effects

22. The parties overlap in the discovery, development, manufacturing and sale of pharmaceutical products for the treatment of HIV.

Marketed HIV products

23. This transaction gives rise to a minimal increment in the overall market for all marketed HIV products. If the transaction is assessed on a narrower basis, the parties overlap only in the market for 'salvage' treatments (see Table 1).
24. The transaction creates a combined market share of [20-30] per cent by value, with an increment [0-10] per cent in the **market for all marketed HIV drugs** in 2008 in the UK. Gilead had [30-40] per cent market share for the same year, with two other companies, Bristol Myers Squibb and Abbott having market shares of [15-25] per cent and [5-15] per cent respectively.
25. In the **market for 'salvage' treatments**, the parties' combined market share in the UK was [0-10] per cent by value, with an increment [0-10] per cent, in 2008. With Abbott having a share of [40-50] per cent, Bristol Myers Squibb, [20-30] per cent; and, Tibotec, [0-10] per cent.
26. Furthermore, current medical guidance from BHIVA recommends Pfizer's only 'salvage' product – Selzentry - for 'experienced' patients who have become resistant to typical treatments, while GSK's main products are co-formulated NRTIs which are typically a 'first line' treatment. This may suggest that these products are more complementary than substitutes. This view is supported by third parties who commented that the parties' HIV products either did not compete or only competed to a limited extent.
27. The OFT does not believe that this merger raises substantive competition concerns as a result of the reduction in the numbers of competitors in the market for existing marketed HIV products in the UK. The OFT has reached this view in light of GSK's market position, the limited increment resulting from this transaction (below [0-10] per cent on both frames of reference), the fact that no evidence presented or reviewed by the OFT suggests that GSK and Pfizer are each other's closest competitors, that several other manufacturers will remain as sizeable competitors in these markets, and the absence of any third party concerns.

Pipeline HIV products

28. As noted above, the only overlap between the parties for pipeline HIV products is at Phase 2 of the clinical stages. Both GSK and Pfizer currently have an NNRTI compound in development in addition to GSK's II¹⁶ and Pfizer's CCR5¹⁷ compound.
29. A possible theory of harm in respect of pipeline products is that (after the completion of this transaction), the merged entity might decide to terminate (or slow down) the development of one of its NNRTI compounds, Pfizer's CCR5 compound or GSK's II compound, so as not to 'cannibalise' sales of their existing marketed HIV products. This in turn may reduce the probability of new HIV drugs reaching the market, to the detriment of HIV patients.¹⁸
30. Phase 2 is an early developmental stage for medicines. This is noted by the relatively low success rate (around 30 per cent) and the length of time from Phase 2 to having a compound approved for marketing. Furthermore, any reduction in competition in the development of new drugs may be offset by products which are at a more advanced development stage (Phase 3) or already available on the market. The table below summarises the range of products for the treatment of HIV which are currently being marketed or under development.

Table 1: Summary of HIV drugs currently marketed and under development

Drug class	Marketed products	Phase 3	Phase2	Phase 1
NRTIs	BMS (2) Gilead (3) Gilead – BMS (1) (*) GSK (6)			
NNRTIs	BMS (1) Boehringer Ingelheim (1) Gilead – BMS (1) (*) Pfizer (1) (**) Tibotec (1)	Tibotec (1)	Ardea (1) GSK (1) Pfizer (1)	Ardea (1)

¹⁶ For definition of 'II', see paragraph 11 above.

¹⁷ For definition of 'CCR5', see paragraph 11 above.

¹⁸ In addition to reducing patients' choice of HIV new drugs, if one of the compounds under development is terminated after the completion of the JV, the parties might also enjoy greater market power than absent the JV in terms of pricing vis-à-vis the national health system.

PIs	Abbott (2) BMS (1) Boehringer Ingelheim (1) GSK (2) Merck (1) Roche (2) Tibotec (1)		Gilead (1)	Pfizer (1)
IIs	Merck (1)	Gilead (1)	GSK (1)	
EIs / CCR5s / FIs	Pfizer (1) Roche (1)	Schering Plough (1)	Pfizer (1)	BMS (1)

Source: The parties, plus information retrieved from manufacturing companies' websites.

Notes: The number in parenthesis indicates the number of products a company currently sells or is developing.

(*) indicates the multi-class (NRTI + NNRTI) drug Atripla jointly marketed by Gilead and BMS. The NNRTI included in Atripla is BMS' Sustiva.

(**) Pfizer's NNRTI Rescriptor is not licensed in Europe.

31. The OFT considers that the overlap between the parties in the development of **NNRTI** compounds at Phase 2 does not give rise to competition concerns. Both Ardea and Tibotec have compounds at Phase 2 and 3, respectively. Additionally, in late 2008 Tibotec launched a new NNRTI compound under the brand name of Intelence. Other NNRTIs currently available include BMS' Sustiva (which is currently the most sold product in this drug class and which is also incorporated in the multi-class drug Atripla) and Boehringer Ingelheim's Viramune.¹⁹
32. In addition, as noted by the Commission in Bristol Myers Squibb / Dupont, NNRTIs and PIs are both 'third agents' which are capable of being prescribed together with NRTIs, so there is a degree of competition from PI compounds currently on the market or under development.
33. The OFT considers that the overlap between the parties in the **development of IIs and EIs/CCR5s/Fis** does not give rise to competition concerns, assuming that these drugs are viewed as part of the same market, with or without PIs.²⁰ This is because, as shown above in Table 1, while the parties' compounds are still at Phase 2, Gilead and Schering Plough have

¹⁹ Given the recent introduction of Tibotec's product, and the fact that BMS's is the leading product in this class, the OFT has no evidence to suggest that they would not be a competitive constraint the parties products should they successfully complete clinical trials.

²⁰ If these drug classes are considered as separate markets, there is no overlap between the parties.

one compound each at Phase 3. Moreover, Merck and Roche already have a product on the market (along side Pfizer's Selzentry). If PI products are also included, Gilead has a compound at Phase 2, and there are currently ten PI compounds available on the market (including two drugs manufactured by GSK).

34. Finally, the majority of third parties were of the view that the parties only competed to a limited extent in the development of new HIV products (including NNRTI compounds and salvage products), and one considered that they did not compete at all.

CONGLOMERATE AND PORTFOLIO EFFECTS

35. As noted above, in a typical treatment for HIV several drugs from different classes are prescribed together in order to achieve the maximum effectiveness. This may suggest that different drugs are in fact complements, rather than substitutes.
36. Assuming this is the case, it is necessary to assess whether GSK and Pfizer might engage in anti-competitive foreclosure behaviour after the completion of this joint-venture by 'tying' or 'bundling' together their products, or through anti-competitive 'portfolio effects'.
37. It is, therefore, necessary to consider firstly the parties' ability and incentives to foreclose their competitors, and secondly whether any consequent detriment will have an anti-competitive impact on either patients or the national health services (which almost unanimously purchase these drugs).²¹
38. In respect of the GSK Newco's **ability** to foreclose rivals, this assessment focuses on whether either of the parent companies, GSK and/or Pfizer, have a significant degree of market power in any of the candidate relevant markets. Pre-merger status-quo is not necessarily the best proxy for assessing the post-merger outcome but given the minimal overlaps flowing from this transaction, this assessment focused on the pre-merger situation of the parent companies in these markets and any foreseeable developments.

²¹ See the *Merger Assessment Guidelines*, jointly published by the Competition Commission and the OFT in April 2009 (in particular, Part 4, section C-e), and also section V of the European Commission's *Guidelines on the assessment of non-horizontal mergers*, of 18 October 2008. .

39. The OFT considers that it is highly questionable whether GSK Newco would have the ability to foreclose rivals by combining any of their products on the basis of: GSK's potential lack of market power in the NRTI class and the differences in characteristics between GSK's NRTI drugs and Pfizer's Selzentry which suggests that the number of patients for whom these products taken in combination would be appropriate is unlikely to be large.
40. In the NRTI drug class (excluding Atripla, as it is a multi-class drug, see below), GSK reported a market share of about [40-50] per cent in 2008. In this case, the OFT notes that another competitor, Gilead, is a strong (and potentially stronger) rival which has steadily been gaining market share at GSK's expense in the market for all HIV drugs since 2006. The parties estimate Gilead's market share by value in 2008 for NRTI class drugs to be in the region of [45-55] per cent.²² The BHIVA guidelines of 2008 recommend the use of either Gilead's NRTI Truvada or GSK's NRTI Kivexa in initial therapy. However, the guidelines also state that Kivexa should be used with caution for certain patient groups. In addition, Gilead's innovative multi-class drug Atripla, which is produced in collaboration with BMS, is the first drug that obviates the need to take several pills at the same time as it combines the two core NRTIs and NNRTI into one pill.
41. In the EIs/CCR5s/FIs segment, while it is true that Pfizer's Selzentry is the only CCR5 class drug currently available on the market, CCR5s are a very recent compound, and face competition from other compounds in the same segment for example, Roche's FI, Fuzeon, Merck's II, Isentress, and quite possibly from PIs, since these are all third agents. Furthermore, Pfizer's Selzentry is a 'niche' drug, not only because it is only recommended for 'experienced' patients, but also because it only treats patients affected by a particular strain of the virus (which amounts to about half of the infected population). In addition, since it was only launched in 2007, any possibility to combine Selzentry with other GSK drugs is at best experimental and likely to require significant testing and further R&D activity. This confirms that the parties might not be able to combine their products such that this results in anti-competitive foreclosure.

²² The parties estimate Gilead's share for all HIV drugs, by value to have increased from [20-30] per cent in 2006 to [30-40] per cent in 2009, in comparison to GSK's own share which has decreased from [30-40] per cent to [20-30] per cent over the same period.

42. Taking a cautious approach (and notwithstanding that the OFT considers it highly questionable whether GSK Newco would have sufficient market power to exercise an ability to foreclose rivals), the OFT has also considered whether GSK Newco would have the **incentive** to foreclose. The market for EIs/CCR5s/FIs is still a 'niche' market worth about £1.6 million in 2008, that is, 0.5 per cent of the total sales for all HIV drug classes. It would not make business sense for GSK Newco to forego sales in the NRTI class in order to gain market shares on the smaller EIs/CCR5s/FIs segment.²³
43. A further important factor preventing anti-competitive conglomerate or portfolio effects is that 'experienced' patients, resistant to typical HIV treatments, need to change their combination of drugs frequently (approximately, every 14 – 24 months). Any advantage resulting from co-formulating any of GSK's drugs with Pfizer's Selzentry is expected to be small and/or non-permanent.
44. In fact, GSK Newco may have the incentive to make each of its compounds available separately, so that they can be combined together with competitors products as the individual patient requires. Pre-merger, all the individual components of GSK's co-formulated branded drugs, Kivexa / Epzicom, Combivir and Trizivir are also available separately. The same applies to Gilead's Truvada and Atripla branded drugs. On this basis, then, the OFT takes the view that the merged entity will lack the incentive to foreclose rivals from accessing to its compounds. Given this conclusion on incentives (and notwithstanding whether or not GSK Newco would have the ability to foreclose), the OFT has not needed to consider whether or not any consequent detriment may be expected to have an anti-competitive impact on GSK Newco's customers.
45. In light of the above, and in the absence of any third party concerns, the OFT does not believe that the anticipated JV may be expected to give rise to competition concerns on the basis of foreclosure through combining different HIV drugs currently produced by GSK Newco. Given its conclusion on unilateral effects in relation to HIV pipeline products (that is, that a number of competing products either already exist or are at a similar or advanced stage of development), the OFT considers that this finding on

²³ An equivalent theory of harm does not arise in relation to NRTIs and NNRTIs given that Pfizer's NNRTI product, Rescriptor is not licensed in Europe.

conglomerate and portfolio effects also applies in relation to future GSK Newco products. A similar reasoning – and conclusion – applies to foreclosure through anti-competitive portfolio effects.

CO-ORDINATED EFFECTS

46. As noted above, the impact of the proposed transaction between GSK and Pfizer on the current market structure in the HIV sector is small. It follows that the transaction does not increase the likelihood of tacit (or explicit) collusion aimed at raising prices, reducing quality or innovation, or curtailing output. In addition, some features of the pharmaceutical industry – in particular the differentiated nature of products and the fact that the first manufacturer to develop an innovative drug is awarded a statutory monopoly for an extended period of time – make it inherently difficult to reach terms of coordination as well as to align behaviour and incentives among rivals.
47. On this basis, and in the absence of any third party concerns, the OFT takes the view that the proposed joint venture may not be expected to give rise to competition concerns in terms of coordinated effects.

BARRIERS TO ENTRY AND EXPANSION

48. Since this transaction does not give rise to competition concerns it has not been necessary to conclude on barriers to entry.

BUYER POWER

49. Since the proposed transaction does not give rise to competition concerns it has not been necessary to conclude on buyer power.

THIRD PARTY COMMENTS

50. The vast majority of third parties indicated that GSK and Pfizer were not close competitors in either the supply or the development of HIV drugs; and as such, they did not express concerns about the proposed JV. Several third parties noted that the transaction might foster R&D activity in the HIV area, especially since GSK is currently perceived to be in a difficult position, considering the maturity of its product portfolio and the lack of

compounds it has at Phase 3.²⁴ These third parties argued that the anticipated JV would ultimately benefit HIV patients. One competitor expressed concerns about the 'enhanced basket of products and services' offered by the new company; these concerns have been examined and dismissed in the context of 'portfolio effects' above.

ASSESSMENT

51. GSK and Pfizer intend to place their entire HIV businesses²⁵ into a new JV company. Pre-merger they overlap in the discovery, development, manufacturing and sale of pharmaceutical products for the treatment of HIV. In particular, GSK currently sells six products in the NRTI class (of which three – Combivir, Kivexa/Epzicom, and Trizivir – are co-formulated), and two PIs. It is also developing one NNRTI and one II at Phase 2. In turn, Pfizer sells the only CCR5 currently available on the market (Selzentry), and it is developing one NNRTI and one CCR5 at Phase 2, as well as one PI at Phase 1.
52. There is a range of plausible potential product market definitions for this case. However, since the anticipated JV does not lead to competition concerns, the question of the relevant product market has been left open. The geographic frame of reference has also been left open for the same reason. For the purposes of the assessment, the relevant geographic scope is deemed to be national in scope for marketed HIV products, while for HIV pipeline products at least EEA wide (if not worldwide).
53. In relation to marketed HIV products, the increment attributable to the transaction is less than [0-10] per cent under all credible market definitions. GSK's share of the supply of all marketed HIV products was [20-30] per cent in 2008, and has been in steady decline over the last three years. Additionally, the parties' products belong to different classes within the HIV therapeutic area and are not close substitutes. Nor is GSK about, or likely, to launch a product in direct competition with Pfizer's Selzentry (or vice versa). As a result, there is no substantial lessening of competition in relation to marketed HIV products.

²⁴ [].

²⁵ Excluding HIV vaccines.

54. As regards the development of new HIV drugs (HIV pipeline products), even if the parties were to terminate any of the compounds they are independently developing at present, rival pharmaceutical companies have other compounds at the same (that is, Phase 2) or more advanced stage of development. In addition, in the relevant drug classes there are several products already available on the market, some of which were launched as recently as 2007 and 2008. As a result, the anticipated JV may not be expected to lead to any detriment in terms of future choice (or pricing) of drugs available for the treatment of HIV.
55. Furthermore, the typical treatment of HIV requires a combination of drugs from different classes (typically, two NRTIs plus one NRTI or one PI). This may indicate that the different drugs are in fact complements, rather than substitutes.
56. In light of the possible complementarities between the parties' products, the OFT has considered whether this transaction could lead to anti-competitive 'conglomerate' or 'portfolio' effects by 'tying' or 'bundling' together their products. However, on the evidence available to it, the OFT has concluded that it is highly questionable whether the anticipated JV would have the ability to foreclose its rivals but that even if it did, it would lack the incentive to do so. On this basis, the proposed transaction does not give rise to competition concerns as a result of foreclosure through combining different HIV drugs produced by the parties, or portfolio effects.
57. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

58. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.