

**MCKESSON DEUTSCHLAND GMBH & CO KGAA/UDG
HEALTHCARE PLC WHOLESALE AND ASSOCIATED
BUSINESSES (the Notified Concentration)**

**REQUEST PURSUANT TO ARTICLE 9(2) OF COUNCIL
REGULATION (EC) No 139/2004**

COMP/M.7818

INTRODUCTION

1. This submission is provided by the United Kingdom of Great Britain and Northern Ireland's (**UK's**) Competition and Markets Authority (**CMA**) to the European Commission (the **Commission**) in support of the CMA's request made under Article 9(2) of Council Regulation 139/2004 (**EUMR**) by letter of 22 January 2016, that the Commission partially refers the Notified Concentration to the UK so that the CMA can examine the Notified Concentration under the UK merger control provisions set out in the Enterprise Act 2002.¹

TIMING

2. The CMA received a copy of the parties' Form CO on 14 January 2016. The 15 working day deadline in which to make a request under Article 9(2) EUMR is therefore 4 February 2016.

THE UNDERTAKINGS CONCERNED

McKesson

3. The acquiring company, McKesson Deutschland GmbH & Co KGaA (the **Purchaser**), is an entity ultimately owned by the McKesson Corporation (**McKesson**).

¹ The CMA would have jurisdiction under the Enterprise Act 2002 to examine the Notified Concentration were it to be referred back under Article 9 EUMR as the Notified Concentration would constitute a relevant merger situation and the UK turnover of the target exceeds £70 million.

4. McKesson is a United States-based entity which operates in the distribution and delivery of medicines as well as medical equipment, medical supply products and the delivery of healthcare information technology to healthcare organisations.
5. McKesson acquired the sole control over Celesio AG (**Celesio**) in February 2014. The wholesaling subsidiary of Celesio in the UK, AAH Pharmaceuticals Limited (**AAH**), supplies prescription-only medicines, pharmacy-only medicines and other medical products,² while Lloyds Pharmacy Limited³ and Unicare Pharmacy Limited,⁴ both subsidiaries of Celesio, operate retail pharmacies in the UK and the Republic of Ireland (**ROI**) respectively.
6. Therefore, through its subsidiaries, McKesson is active in the UK at the wholesale and the retail levels of the distribution of pharmaceuticals.

UDG

7. UDG Healthcare plc (**UDG**) is a Dublin-based provider of sales and marketing services, wholesaling, medical equipment, packaging and specialist healthcare delivery services.
8. As a result of the Notified Concentration, the Purchaser will acquire sole control of the following businesses from UDG:
 - (a) The '**UD Wholesale Business**' which comprises the United Drug Supply Chain Services business (**UDSCS**) operating in the ROI and the United Drug Sangers business (**UDS**) operating in Northern Ireland (**NI**). Both businesses offer distribution, wholesaling and related services in relation to prescription-only medicines, pharmacy-only medicines as well as other products⁵ to retail pharmacies, hospitals, GPs and other customers;
 - (b) The TCP Group, a healthcare services provider specialising in direct-to-patient services offering logistics and nursing care in the ROI (**TCP**); and
 - (c) The MASTA Business, which offers wholesale supply of flu and travel vaccines across the UK, and also offers travel advice and vaccinations through its network of private health clinics (**MASTA**).

² The excerpt 'prescription-only medicines, pharmacy-only medicines and other medical products' is described at paragraph 14 of the Form CO as 'Pharmaceuticals and other OTC products'. See also the 'Definitions and Glossary' of the Form CO.

³ Mentioned as Lloyds Retail Pharmacy in the Form CO paragraph 2.

⁴ Unicare Pharmacy Limited now operates under the Lloyds brand in ROI.

⁵ The excerpt 'in relation to prescription-only medicines, pharmacy-only medicines as well as other products' is described at paragraph 15.1 of the Form CO as 'Pharmaceuticals and other products'. See also the 'Definitions and Glossary' of the Form CO.

9. Consequently, through the UD Wholesale Business in NI and MASTA, UDG is active in the UK at the wholesale level of the distribution of pharmaceuticals and other related products and services.
10. Together the Purchaser and UDG are referred to as the **parties**.

APPLICATION OF ARTICLE 9 EUMR

11. The CMA is making this request pursuant to Article 9(2) of the EUMR. Specifically, the CMA believes that the Notified Concentration fulfils the criteria of Article 9(2)(a) as threatening to affect significantly competition in a market in the UK. Specifically, the CMA is making a request for the Commission to refer McKesson's acquisition of the following businesses from UDG which are active in the UK:
 - (a) The UD Wholesale Business which offers distribution, wholesaling and related services in relation to pharmaceuticals and other products, to the extent it is active in the UK; and
 - (b) MASTA, which offers wholesale supply of flu and travel vaccines, and also offers travel advice and vaccinations through its network of private health clinics.
12. According to the Commission's notice on case referral⁶ (the **Notice**), in making a request, Member States should take account of the principle of subsidiarity and, in particular, consider (i) which is the more appropriate authority for carrying out the investigation, (ii) the benefits inherent in a one-stop shop system, and (iii) the importance of legal certainty with regard to jurisdiction.
13. The CMA has had due regard to these factors and, for the reasons set out below, considers that it is appropriate that the case be referred to the CMA for investigation.

Most appropriate authority

14. According to paragraph 9 of the Notice, in deciding the more appropriate authority to deal with a case, regard should be had to the specific characteristics of the case as well as the tools and expertise available to the authority. Particular regard should also be had to the likely locus of any impact on competition resulting from the merger.

⁶ Official Journal 2005/C 56/02.

Links with the CMA's investigation in the Celesio/Sainsbury Pharmacies Merger

15. On 8 September 2015, the European Commission referred to the CMA the whole of the anticipated acquisition of Sainsbury's Supermarkets Limited's UK Pharmacy Business by Celesio which was already under the sole control of McKesson (the **Celesio/Sainsbury Pharmacies merger**).⁷
16. Celesio, through its subsidiary Lloyds Pharmacy Limited, operates more than 1,000 pharmacies across the UK. The CMA has identified, as part of its first phase investigation, a number of local areas where customers may be affected by a loss of competition between Lloyds Pharmacy Limited and Sainsbury's pharmacies.
17. Therefore, the CMA found that there was a realistic prospect of a substantial lessening of competition and referred the Celesio/Sainsbury Pharmacies merger for an in-depth investigation under sections 33(1) of the Enterprise Act 2002 relating to the retail supply of prescription-only medicines, pharmacy-only medicines, and pharmacy services to end-customers.
18. McKesson through its subsidiary Celesio⁸ is therefore seeking merger control clearance in relation to two separate mergers in the same sector, that is, both relating to the distribution of pharmaceuticals and related services. The Notified Concentration at the wholesale level and the Celesio/Sainsbury Pharmacies merger at the retail level.
19. The parties in the Notified Concentration have identified the following overlaps in the UK:
 - (a) a horizontal overlap in the wholesaling activities related to prescription-only medicines, pharmacy-only medicines and other medical products⁹ specifically between the Northern Irish part of the UD Wholesales Business and McKesson's subsidiary AAH;¹⁰
 - (b) a horizontal overlap in the wholesale of medicines which can be sold in retail pharmacies and other outlets (eg supermarkets)¹¹ as well as health & beauty products, between AAH's Enterprise business and UDG's Health & Beauty division;¹²

⁷ Please see the [CMA's case page](#) for more details.

⁸ See paragraph 5 above.

⁹ The excerpt 'prescription-only medicines, pharmacy-only medicines and other medical products' is described in at paragraph 14 of the Form CO as 'Pharmaceuticals and other OTC products' see also the 'Definitions and Glossary' of the Form CO.

¹⁰ See paragraph 45.1 (i) of the Form CO.

¹¹ Referred to as GSL medicine in the Form CO.

¹² See paragraph 45.1 (iii) of the Form CO.

- (c) a vertical relationship between the UD Wholesale Business and the McKesson-controlled Lloyds Retail Pharmacy business;¹³
 - (d) a horizontal overlap in the wholesale of travel and flu vaccinations between UDG's subsidiary MASTA and AAH;¹⁴ and
 - (e) a horizontal overlap for the provision of vaccines and travel healthcare services between MASTA and the Lloyds Retail Pharmacy business.¹⁵
20. There is therefore a vertical relationship between the UD Wholesale Business and the McKesson-controlled Lloyds Retail Pharmacy business and these substantive links suggest that both mergers should be reviewed by one and the same authority to ensure that any impact can be fully assessed and an inconsistent outcome avoided.
21. Given the fact that the Commission has referred the Celesio/Sainsbury Pharmacies merger to the CMA which has opened an in-depth investigation, the CMA is logically the appropriate authority to review the Notified Concentration. As set out further below, the one-stop-shop principle in this case will fully deliver its benefits if the Notified Concentration is assessed at the CMA.

Locus of impact on competition

22. Notwithstanding the important issue of the parallel consideration of another merger in this business sector, the CMA considers that the Commission should have particular regard (as envisaged by the Notice) to the fact that the effects of the Notified Concentration are to a great extent UK-centric. The Notified Concentration concerns undertakings operating in the distribution of pharmaceuticals and other related products and services in the UK and all of the horizontal overlaps are limited to the UK.¹⁶ As a result, any adverse effects resulting from a loss of competition (the likelihood of which is set out further below) will be mostly felt by consumers in the UK. Given this nexus of competition concerns, the CMA considers that the principle of subsidiarity strongly supports a referral to the UK.

¹³ See paragraph 45.2 of the Form CO.

¹⁴ See paragraph 45.1 (ii) of the Form CO.

¹⁵ See paragraph 45.3 of the Form CO.

¹⁶ Out of the six overlaps identified at paragraph 45 of the Form CO, only a vertical relationship between UDG's Wholesaling and Lloyds Retail Pharmacies is ROI-related.

Application of the one-stop shop principle

23. The CMA notes that, as referred to in the Notice, the principle of a one-stop-shop is beneficial to competition authorities and businesses alike and these benefits should be taken into account in considering the referral of cases between the Commission and national competition authorities. The CMA recognises that the handling of a merger by a single competition authority normally increases administrative efficiency, avoiding duplication and fragmentation of enforcement effort as well as potentially incoherent treatment (regarding investigation, assessment and possible remedies) by multiple authorities. For example, the CMA recently made a request under Article 22 of the EUMR that the Amadeus/Navitaire merger be referred for review by the Commission,¹⁷ in circumstances where that transaction met the thresholds for review by the CMA.
24. In the present case, however, one-stop-shop considerations support a partial referral of the Notified Concentration to the CMA. In particular, given the CMA's current investigation into the Celesio/Sainsbury Pharmacies merger, granting of the Article 9 request will avoid duplication and fragmentation of the investigation of mergers in this business sector in the UK. In addition, it will lower the burden on businesses and lower the risk of inconsistent approaches being taken by different competition authorities which the one-stop-shop system seeks to avoid.

Partial referral

25. Given that the horizontal overlaps are all within the UK, there is no possibility of any negative impact arising from the referral of the Notified Concentration to the CMA being partial (ie not including the ROI markets). The Commission will be able to assess the vertical overlaps in the ROI with no risk of an inconsistent outcome.
26. Therefore, the CMA submits that it is appropriate for all potentially affected markets in the UK to be referred to the CMA for review.
27. The parties submitted that in terms of the UK aspects of the Transaction, the authorities should distinguish between two distinct, and currently separately operated businesses, namely: (i) the Pharmaceutical Wholesaling business in

¹⁷ Proposed acquisition by Amadeus IT Group S.A. of Navitaire LLC. Article 22 request submitted 18 September 2015.

NI (ie UDS); and (ii) the MASTA business relating to the specialist wholesale and retail of flu and travel vaccines.¹⁸

28. The parties contend that any review by the CMA should be limited to the acquisition of the UDS business in NI, and that the Commission should retain and clear the remainder of the Transaction under Article 6(1)(b) EUMR (ie the acquisition of the ROI Wholesaling business, TCP and MASTA).¹⁹
29. As mentioned above, the one-stop-shop system seeks to increase administrative efficiency, avoiding duplication and fragmentation of enforcement effort as well as potentially incoherent treatment.²⁰ Consequently, fragmentation of cases through referral should be avoided where possible. While partial referrals are nonetheless possible under Article 9 of the EUMR, it is normally appropriate for all connected parts of a case to be dealt with by a single authority.²¹ The CMA is of the opinion that fragmenting the analysis pertaining to the wholesale distribution of pharmaceuticals and related services in the UK, as the parties argue, would run against the above mentioned objective.
30. By way of illustration of its opposition to the fragmentation of the analysis pertaining to the wholesale distribution of pharmaceuticals and related services in the UK, the CMA would like to point out that the parties have not been in a position to provide reliable data concerning the products distributed at the wholesale level by MASTA since 'IMS does not provide separate data on flu and travel vaccines but includes the data within its figure for all Wholesaling'.²² This may suggest that the wholesale supply of flu and travel vaccines is a part of the wholesaling of pharmaceuticals which the parties consider 'should be viewed as a national market'.²³
31. The CMA's view is therefore that the Notified Concentration threatens to significantly affect competition in the distribution of pharmaceuticals and other related products and services in the UK which, because of the national nature of their regulation (see paragraph 43 below), presents all the characteristics of a distinct market, and that all UK aspects should be referred to the CMA for review.

¹⁸ See page 19 and 20 of the Form CO.

¹⁹ See page 19 and 20 of the Form CO.

²⁰ See paragraph 11 of the Notice.

²¹ See paragraph 12 of the Notice.

²² See paragraph 272 of the Form CO.

²³ See paragraph 228 of the Form CO.

Legal certainty

32. The CMA is not aware of any reasons relating to legal certainty which should prevent a referral. Instead, as this referral request makes clear, there are compelling reasons, given the particular circumstances of the case, to depart from the Commission's original jurisdiction.
33. In addition, the CMA acted promptly in making the parties aware of the possibility of an Article 9 referral to the CMA. For example, a meeting with the parties was held at a very early stage (prior to commencement of pre-notification with the Commission) in which the parties were made aware of the possibility of a request for a referral by the CMA. Also, the CMA promptly informed the parties of its intention to make an Article 9 request, before the Form CO was submitted to the Commission.
34. The Commission has also been aware of the CMA's intention to make an Article 9 request, as this has been communicated in advance to the Commission.

Article 9(2)(a) requirements

35. With respect to a request being made pursuant to Article 9(2)(a) EUMR, the CMA is required to show that the Notified Concentration 'threatens to affect significantly competition in a market within [the UK], which presents all the characteristics of a distinct market'.
36. By way of explanation, the Notice states that in order for the Commission to refer the case to the CMA, the CMA must demonstrate that, based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse impact on competition and therefore deserves close scrutiny.²⁴ In addition, the CMA must show that the geographic markets affected by the transaction are at most national in scope.
37. The following paragraphs summarise the views of the parties and third parties on the question of jurisdiction before giving the reasons why the CMA believes that the requirements of Article 9(2)(a) are met.

Views of the parties

38. As mentioned at paragraph 28 above the parties contend that a referral to the CMA should be limited to the acquisition of the UDS business in NI, and that

²⁴ See paragraph 35 of the Notice.

the Commission should retain and clear the remainder of the Transaction (ie MASTA for the UK part of the Transaction) under Article 6(1)b.

Views of third parties

39. The CMA received an unsolicited complaint from a third party, submitting that the Notified Concentration would have a significant adverse impact on competition in the pharmaceutical wholesale market in the UK and that the Notified Concentration should be subject to close scrutiny by the CMA.
40. The CMA issued an invitation to comment (**ITC**) on the possibility of submitting a request to the Commission under Article 9 EUMR on 8 January 2016 and invited third parties to comment by 15 January 2016. However, the CMA has not received any responses from third parties within that timeframe.

National scope of the geographic markets affected by the concentration

41. According to the Parties' Form CO, horizontal and vertical overlaps arise in the supply of certain products in the UK (see paragraph 19 above).
42. The UK competition authorities and the Commission have found in previous cases that the relevant geographic markets for pharmaceutical wholesaling has both national and regional characteristics.²⁵ At this stage, the CMA is not aware of any evidence according to which it should depart from previous cases.
43. The regulatory environment for licensing and supervision is the same throughout the UK and the National Health Service (**NHS**) price list which applies to certain pharmaceuticals also applies throughout the UK.²⁶ The parties have also indicated that, on the demand side, there is a regional dimension in NI which could lead to a regional market definition for the supply of certain categories of products.²⁷
44. In addition and as submitted by the parties, the provision of vaccines and healthcare services is likely to be local in nature.²⁸
45. As such, it is important to note that each and every affected market is national, regional or local in scope, including any markets relating to the wholesale supply of medicines and travel and flu vaccines, as well as the provision of vaccines and travel healthcare services. The CMA therefore

²⁵ See paragraph 219 of the Form CO and Case COMP/M.4301 - *ALLIANCE BOOTS / CARDINAL HEALTH* paragraphs 23–25.

²⁶ See paragraph 219 of the Form CO.

²⁷ See paragraph 231 of the Form CO.

²⁸ See paragraph 252 of the Form CO.

considers that the second requirement of the Article 9(2)(a) test is met, since the Notified Concentration affects markets that are national and/or local in scope (and may also include some regional aspects).

Notified Concentration threatens to affect significantly competition

46. Without prejudice to a full investigation into the competitive effects of the Notified Concentration, for the reasons set out below and based on the information provided by the parties in the Form CO and the CMA's knowledge of the UK pharmaceutical sector and relevant national licensing and regulations, the CMA considers on a preliminary analysis that there is a real risk that the transaction may have a significant adverse impact on competition in the UK for the distribution of pharmaceuticals and other related products and services. The CMA therefore believes that the first requirement of Article 9(2)(a) is met, that the Notified Concentration threatens to affect significantly competition.

Wholesale supply in Northern Ireland

Horizontal unilateral effects

47. On a preliminary basis and based on the information provided by the parties in the Form CO, the CMA considers that the Notified Concentration will result in the loss of the independent Regional Broad-Line Wholesaler²⁹ UDS in NI. The parties overlap in the wholesaling activities relating to prescription-only medicines, pharmacy-only medicines and other medical products in NI. According to the data provided by the parties, the Notified Concentration will result in a combined market share of [30–40%].³⁰ In addition, [X].³¹ Under that arrangement, [X] has a [20–30%]³² share of supply in NI, meaning that the Notified Concentration could result in a combined share of supply of [50–60]%.
48. Alliance Boots, AAH and Phoenix are the three Broad-Line Wholesalers which provide their services across the UK (**UK Broad-Line Wholesalers**).³³ In the

²⁹ The parties have defined Regional Broad-Line Wholesalers as 'Wholesalers who supply a broad range of products including Branded Pharmaceuticals (including some that are subject to general, restricted or Exclusive Arrangements) and offer a twice-daily delivery service to Dispensaries. However, unlike Broad-Line Wholesalers they do not operate on a national level and currently do not participate in UK-wide or ROI-wide tenders for Solus Arrangements. Regional Broad-Line Wholesalers carry out Broad-Line Wholesaling or Short-Line Wholesaling on a regional level. UDS does, however, have three Semi-Exclusive Arrangements (RWS) that it has arranged directly with Manufacturers for delivery in NI'. See the 'Definitions and Glossary' of the Form CO.

³⁰ See Form CO p18.

³¹ See paragraphs 96 (and footnote 56), 151 and 268 of the Form CO.

³² See Form CO p18 and also paragraphs 267–269.

³³ See paragraphs 130 and 228–230 of the Form CO.

Alliance Boots / Cardinal Health merger,³⁴ the Commission cited AAH and Phoenix as major competitors to Alliance Boots in the UK market for the wholesaling of pharmaceuticals.³⁵ However, Phoenix has only [0–10%] market share in NI. The remaining competitors in NI are Regional Broad-Line Wholesalers and Short-Line Wholesalers³⁶ which, contrary to UK Broad-Line Wholesalers, do not have any exclusive arrangements for branded pharmaceuticals.³⁷ Additionally, they usually do not provide the same frequency of delivery services.³⁸ Therefore they may not be in a position to exercise sufficient competitive constraints on the parties.

49. According to the parties only the three UK Broad-line Wholesalers are, and will be, in a position to bid for the exclusive arrangements for branded pharmaceuticals. For these reasons, the CMA is concerned that UDS is an important competitive force in NI which will be lost as a result of the Notified Concentration and there is therefore a real risk of it resulting in a significant impediment to effective competition in the UK.

Co-ordinated effects

50. The CMA considers on a preliminary analysis that a reduction in the number of Broad-Line Wholesalers in Northern Ireland may increase the likelihood of co-ordinated behaviour between the remaining Broad-Line Wholesalers, since co-ordination may become easier and more profitable. The CMA notes that, as set out above, the merged entity may reach up to [50–60%] of share of supply through the [✂].

Wholesale supply of flu and travel vaccination

51. As mentioned at paragraph 19(d) above the parties have identified a horizontal overlap in the wholesale supply of travel and flu vaccinations between UDG's subsidiary MASTA and McKesson's subsidiary AAH. The parties have not currently provided sufficient information to assess whether competition concerns may arise from the removal of this competitor. Therefore, the CMA would need to assess the potential lessening of competition in the distribution of flu and travel vaccines in the UK through the loss of a wholesaler.

³⁴ See footnote 25 above.

³⁵ See paragraph 28 of Case COMP/M.4301 - *ALLIANCE BOOTS / CARDINAL HEALTH*.

³⁶ The parties have defined Short-Line-Wholesaler as 'Wholesaler (regional or otherwise) that does not carry the full complement of prescribable Pharmaceuticals. Short-Liners often concentrate on a range of Generics and other high volume products and tend to provide a once-daily (or less frequent) delivery service to their customers'. See the 'Definitions and Glossary' of the Form CO.

³⁷ See paragraphs 101 and 134 of the Form CO.

³⁸ See paragraph 138 of the Form CO.

Provision of vaccines and travel healthcare services

52. As mentioned at paragraph 19(e) above, the parties have identified a horizontal overlap for the provision of vaccines and travel healthcare services between UDG, through MASTA's network of private health clinics, and McKesson, through its Lloyds Retail Pharmacy business. The parties have not currently provided sufficient information to assess whether competition concerns may arise from the removal of this competitor. Therefore, the CMA would need to assess the potential lessening of competition in the provision of vaccines and travel healthcare services nationally and/or locally through the loss of a provider.

Conclusion on competition concerns

53. For the reasons set out above, the CMA considers that the requirements of the Article 9(2)(a) EUMR test are met, since the Notified Concentration threatens to significantly affect competition in the distribution of pharmaceuticals and other related products and services in the UK.

CONCLUSION

54. For the reasons described above, the CMA requests the Commission to refer the parts of the Notified Concentration that potentially affect markets in the UK for the CMA to review.