

Completed merger of Seniorlink Eldercare and Aid Call resulting from the completed merger between Help the Aged and Age Concern England

ME/4034/09

The OFT's decision on reference under section 22(2)(a) given on 21 July 2009. Full text of decision published 26 August 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. **Age Concern England** is a large well-known charity. It campaigns in the interests of the elderly and provides a range of services to them. The organisation runs a network of 170 charity shops (mainly in England) and also offers a wide range of commercial products and services to the over 50s. These include insurance, financial advice, holidays and personal pendant alarms (through Aid Call). Age Concern England's turnover in 2008 in the UK was just under £80 million. Of this, just over £33 million was attributable to commercial activities of the charity.
2. **Aid Call** was established in 1981 and was subsequently purchased by Age Concern England in 1998, becoming a wholly owned subsidiary. It supplies a variety of products and services to individuals and medical institutions which incorporate assistive technology and are intended to promote safer living primarily for the elderly. Aid Call's turnover was 8.7 million, of which £6.1 million relates to its personal pendant alarm business¹ (the area of overlap).

¹ The OFT believes that this £6.1 million figure relates primarily to Aid Call's supply to private customers.

3. **Help the Aged** is an international charity representing the interests of older people. They have over 350 charity shops (again, mainly in England), and supplies a variety of products and services aimed primarily at the elderly. Help the Aged's annual turnover for 2008 was over £74 million.
4. **SeniorLink Eldercare** is a Limited Liability Partnership (LLP) which was owned 50:50 by Help the Aged (via its subsidiary 'Intune Group Limited') and Eldercare.² The partnership was set up in August 2006 for a minimum period of five years. SeniorLink Eldercare is active in the provision of personal pendant alarms. The board of the LLP comprises two representatives from each party and profits are split 50:50 between them. The turnover of SeniorLink Eldercare was £3.2 million in the 11 months to March 2009, and the personal alarm business had a turnover of at least £1.2 million.³
5. **Age UK** is the legal name which has been given to the new entity created by the merger of Age Concern England and Help the Aged (the Charities), although some integration of the Charities is in progress re-branding has not yet been undertaken and all the parties above currently operate under their existing names.

TRANSACTION AND RATIONALE

6. The Charities merged on 1 April 2009, creating four new national charities which will eventually operate under a new brand ('Age UK' being the current legal name of the merged entity) – one UK wide charity, with further charities covering each of Scotland, England and Wales.
7. The merger of the Charities was motivated by the desire to provide a more joined up lobbying and information point for older people and their carers. The bringing together of the Charities' respective pendant alarm businesses – the focus of this decision - was not a specific rationale of

² Eldercare is the trading name of New Church Housing Services Limited, a limited company business based in Manchester.

³ The OFT believes, based on what the parties have told us, that the £1.2 million figure relates to SeniorLink Eldercare's supply of personal pendant alarms to private customers and does not include revenue associated with the supply to either Housing Associations or Local Authorities.

the overall merger, and could therefore in this sense be viewed as a by-product of the merger. The Charities have, however, stated that, post merger, they will be attempting to align as many of their commercial activities as possible.⁴

8. The transaction was notified to the OFT on 1 April 2009 and the extended administrative and statutory deadlines are 21 July 2009 and 11 September 2009 respectively.

JURISDICTION

9. As a result of the transaction, the Parties - SeniorLink Eldercare and Aid Call - have ceased to be distinct. The Parties have, as a result of the merger between Age Concern England and Help the Aged, both come under the 'common ownership and control' of the merged entity Age UK. The OFT believes that with a shareholding of 50 per cent and equal board representation with Eldercare, Help the Aged had, and now Age UK has, at least, the ability to materially influence⁵ the policy of SeniorLink Eldercare for the purposes of section 26(3) of the Enterprise Act 2002 (the Act).
10. The Act defines an enterprise as 'the activities, or part of the activities, of a business'.⁶ This specifically includes any activity which is carried on for gain or reward or which is carried on by an undertaking in the course of which goods or services are supplied 'otherwise than free of charge'. This does not mean that the business must be profit making, and indeed, it can be 'not-for-profit'.⁷ Internal documents from the Parties indicate that SeniorLink Eldercare and Aid Call were both (generally) operated in a commercial manner for gain and reward. While it is apparent that Help the Aged provided a certain proportion (around 60 per cent) of pendant

⁴ Age UK will only control 50 per cent of the joint venture, with Eldercare controlling the other 50 per cent, so that any integration plan would necessarily require the approval of Eldercare as a pre-requisite.

⁵ The OFT has, for the purpose of simplicity of analysis in this decision, treated Age UK as if it had a controlling interest in Seniorlink Eldercare. The OFT's decision on reference in this case is not in fact impacted by the fact that SeniorLink Eldercare actually is also controlled by Eldercare.

⁶ Section 129(1) of the Act.

⁷ In OFT decision of 26 March 2002, Completed Merger between the Imperial Cancer Research Fund and Cancer Research Campaign, the OFT decided that charitable activities which involve the provision of goods and services free of charge fall outside the scope of the Act. In this case, the retailing activities of the Parties are for gain or reward, and so are within the OFT's jurisdiction.

alarms to SeniorLink Eldercare customers in England free of charge (in terms of initial outlay), these customers still needed to pay a quarterly monitoring charge. Although Help the Aged chose to 'gift' its share of the profits from its shareholding in Seniorlink Eldercare to the charity, the customer was charged a commercial rate for the service provided: the monitoring charge was set at a commercial rate comparable to that of other commercial providers of personal pendant alarm services. The OFT therefore concludes that the Parties' activities in relation to the supply of personal pendant alarms constituted part of a business and therefore were enterprises for the purposes of section 129 of the Act.⁸

11. The Parties overlap in the supply of personal pendant alarms. Their combined share of supply in each of (a) Northern Ireland (NI), and (b) Great Britain (GB) in relation to the provision to private customers is estimated to be greater than 25 per cent in each case.⁹ As a result the share of supply test in section 23 of the Act is regarded as being met.
12. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

MARKET DEFINITION

Product scope

13. The Parties are both active in the supply of personal pendant alarms, and associated monitoring services, primarily to the elderly.
14. At the most basic level, this product consists of a personal pendant alarm worn by a person around the wrist or neck which is linked to a base unit connected to a fixed line telephone. In the event of an emergency the wearer can activate the alarm, which sends a signal via the telephone line to the monitoring centre. The monitoring centre will attempt to contact the wearer by telephone before deciding whether to

⁸ The OFT was not aware of any other activities that would constitute parts of a business for the purposes of the Act other than pendant alarm services in relation to which competition concerns potentially arise as a result of the merger. Further, no other activities were mentioned in this respect by third parties during the OFT's investigation.

⁹ Although a completed merger, the OFT understands that the re-branding to Age UK is only in the process of being implemented and will not complete for some time. In the meantime, the Help the Aged and Age Concern brands will continue in existence. For this reason, the decision refers to Help the Aged and Age Concern in the present (and not the past) tense.

alert a person nominated by the wearer or (for some services) send out a member of their own response team. The purchase of equipment is therefore not a solution in itself and a wearer would also require installation of the unit (undertaken by the supplier or self-installed by the wearer) and access to the ongoing monitoring services.

15. A user will therefore typically pay for the unit, the installation of that unit (if not self-installed) and pay an ongoing monitoring charge thereafter. Some packages will also include access to a response team who will attend any incident¹⁰.
16. A user may be able to obtain a personal pendant alarm (and associated services) through his/her local authority or housing association, or can obtain one from a private provider, such as the Parties. A local authority or housing association will often supply the service free of charge, sometimes on the basis of eligibility criteria (based on need and income). Where a person does not meet the criteria, the authority or association may supply the service on either a partially subsidised or fully paid-for basis. Private providers, on the other hand, typically supply their products on a fully paid-for basis.

Supply of other telecare products and services

17. The OFT considered whether the market was wider than personal pendant alarms and encompassed other telecare products and services.¹¹ However, the OFT has received no evidence to suggest that a hypothetical monopolist of personal pendant alarms would be unable to raise prices because of the presence of other telecare products (which appear to cover different aspects of home care). The OFT also

¹⁰ Although, as noted earlier, Help the Aged provided a certain proportion of personal pendant alarm units to its customers free of charge in terms of initial cost of the unit.

¹¹ 'Telecare' is the broad term used to describe a service which provides people who are usually elderly or vulnerable with the support to help them lead independent lifestyles in their own home. Telecare equipment makes it possible for them to call for help and assistance when needed or may detect and notify some potential problem, for example, a moisture sensor may detect an overflowing basin, to a monitoring centre. The Department of Health describes telecare as: 'any service that brings health and social care directly to a user, generally in their homes, supported by information and communication technology. It covers social alarms, lifestyle monitoring and Telehealth'. Other (more sophisticated) products which fall under the general telecare umbrella include flood detectors, pill dispensers, fall detectors etc. The parties do not currently provide 'telehealth' products – these are intended to help in the management of particular medical conditions, for example, multiple sclerosis or diabetes and require the input and recommendation of a clinician.

understands that the use of any such other telecare products may currently be limited in number¹² which may suggest limited substitutability, in practice, for the basic personal pendant alarm.

Supply of personal pendant alarms to different customer groups

18. The Parties supply personal pendant alarms to three broad categories of customers:

(i) local authorities, in GB

(ii) housing associations, in GB and NI

(iii) individual private customers – sometimes called 'self-payers'.

19. The first two of these customer groups (local authorities and housing associations) purchase personal pendant alarms primarily to supply the services to local residents, free of charge. However, both of these customer groups also, and to varying extents, retail these services to individual private customers, on a paid-for basis. As such, as well as being important customer groups for personal pendant alarms, local authorities (in GB) and housing associations (in GB and NI) are also suppliers of such alarms to individual private customers, alongside the Parties.

20. The Parties' sales to these first two customer groups are relatively limited. Even if supply to each of these two groups was considered to constitute a separate market, the Parties' combined share would be well below 25 per cent in each of them on either a UK-wide or national (England, Wales, Scotland and NI) basis.¹³ The OFT therefore does not believe that the transaction has or may be expected to give rise to competition concerns in the supply of personal pendant alarms or, when

¹² One third party [the TSA] told the OFT that there may be around 1.6 million users of pendant alarms in the UK but that there are far fewer users of other – often more sophisticated - telecare packages.

¹³ The OFT considers that the geographic market would be UK-wide or at least national given the prevalence of national suppliers. In NI, the Parties do not overlap in the supply to housing associations as only Aid Call is active to a very limited degree, and there is no local authority provision in NI.

considered separately, monitoring services¹⁴ to local authorities or housing associations, and is not considered further¹⁵.

21. The remainder of this decision therefore focuses on the supply of personal pendant alarms to 'self-payers'. These include paying individuals who purchase directly from private providers (such as the parties), and also those who purchase through local authorities and housing associations, on a fully paid, or partially subsidised, basis. It does not include customers who receive the service free of charge.
22. The OFT has considered whether supply by local authorities (in GB) and housing associations (in GB and NI) to self-payers imposes a sufficient constraint on private providers so as to be included in the same relevant market. Put another way, the OFT has considered whether a hypothetical monopolist private provider of personal pendant alarms would be able to raise prices significantly to its customers, or whether a sufficient number of customers would switch to supply by local authorities and housing associations so as to prevent such a price rise.
23. The OFT understands that provision by local authorities to private individuals varies by region within GB. As noted above, local authorities may have eligibility criteria (based on need and income) such that anyone not fulfilling the criteria would not be entitled to source free/subsidised telecare services from the authority. However, the OFT's research, which has been verified by evidence from third parties, indicates that most local authorities provide some form of pendant alarm

¹⁴ As indicated above, there are several elements to the provision of pendant alarm services, including supply of pendant alarm equipment, installation of that equipment and the monitoring service provided through a monitoring (call) centre. Some providers of pendant alarm services will contract out some or all of these elements. The OFT considered it is appropriate that these elements should be assessed together (as a form of 'system' market) given that individual customers typically purchase both the primary (ie the unit) and secondary (that is, the installation and monitoring service) product/service from the same provider at the same time (the OFT did not receive any evidence of individuals contracting with more than one provider). The decision refers to the supply of personal pendant alarm services interchangeably as 'personal pendant alarms' or 'personal pendant alarm services'.

¹⁵ It was argued by one third party that if the supply of monitoring services to local authorities and housing associations was considered separately then the merger would increase the Parties' pricing power. However, the OFT does not believe this area raises competition concerns. The Parties are the fourth and fifth largest providers of monitoring services to local authorities and housing associations by connections behind Cirrus, Invicta and Tunstall. At worst, the merger could be seen as reducing the number of 'large' (above 40,000 connections) monitoring companies from five to four. Further, the merger potentially creates a stronger competitor to the three largest monitoring companies mentioned above.

to customers who might not be eligible for a free service, on either a partially subsidised or fully paid-for basis. The Parties informed the OFT that housing associations also supply pendant alarms to individuals outside of their association on a partially subsidised or fully paid-for basis but did not substantiate the scale and scope of any such supply.

24. Thus, it would seem that most self-payers in GB potentially have the choice of purchasing between a private supplier of pendant alarms and a local authority. Some may also have the option of purchasing from a housing association.
25. In practice, not all customers are aware of this choice. Internal documents from Aid Call suggest that they primarily target private individuals, many of whom may have simply not considered turning to their local authority for telecare services. The Parties explained to the OFT that they began to operate commercial activities to fill the gap in the market place created by the fact that there was a lack of products on offer from other commercial organisations which were specifically for older people. In addition, some customers are aware of the choice but simply prefer private provision. One competitor of the parties thought that some of its private customers purchased directly from them out of a preference for dealing with the private sector (and were willing to pay a premium for doing so).
26. Nevertheless, as is discussed further below, overall price levels are relatively similar between local authorities and private suppliers and there is some evidence of customers shopping around between these two types of supply. On this basis, the OFT concludes that the market for provision to private individuals is likely to include both private providers and local authorities (in GB).
27. In GB, there is insufficient evidence to conclude as to whether housing associations should also be included within this market, and on a cautious view they are excluded from the discussion which follows. In NI, by contrast, there is some evidence of competition between the parties and a local housing association named Fold. As such, the OFT concludes that local housing associations are likely to be included within the market in NI. Local authorities, by contrast, are not active in this market in NI.

28. It should, though, be noted that the OFT regards market definition as an analytical framework used to assess the relative competitive pressures that different suppliers place on one another. As a consequence, market definition is not an end in itself and, in differentiated markets, over reliance on market definition can sometimes create a risk of drawing bright lines that either overstate or understate the degree of competitive constraints posed by respective suppliers. When considering the impact of the merger, therefore, the OFT focuses on the closeness of competition between the Parties in the supply of personal pendant alarms to paying individuals, the potential constraints that each faces, and on the scale of any lessening of competition arising from the transaction.

Geographic scope

29. Some of the evidence available to the OFT – including the similarity in the product offering and the fact that the Parties each have a single monitoring centre based in England – suggested that the market for personal pendant alarm services could be seen as UK-wide. However, other evidence – such as some differences in pricing policies and business strategies of suppliers – suggested that Northern Ireland (NI) may be distinct from the rest of the UK.

Northern Ireland

30. The Parties suggested that NI was part of an 'Island of Ireland' market given the differences in pricing policies and business strategies of suppliers in each of GB and NI. The Parties argued that the NI market is more competitive than GB, partly attributable to the presence of a single Health Authority and consequent common policy towards telecare across the province (in the form of availability of grants to NI customers satisfying eligibility criteria). Perhaps partly as a consequence, prices charged by Aid Call in NI are lower than those it charges in GB. The Parties' shares of supply, comparing GB and NI, vary significantly since private provision is far more prevalent in NI given an absence of local authority provision, and the Parties are the two main suppliers of pendant alarm services to private individuals. This could be interpreted as evidence of a different competitive landscape between GB and NI. In terms of the monitoring service, one third party suggested that

customers prefer to use a locally based call centre, although the OFT notes that the Parties both serve NI from a single centre in England.

31. The OFT was not provided with credible evidence to suggest that the Parties were constrained by provision (or the threat of provision) from telecare suppliers in the Republic of Ireland. The parties gave one example of a housing association which was supplying across the whole of the island of Ireland, but this was not considered sufficient. Further, the parties gave another example of a competitor who was supplying to NI but whose monitoring centre was in GB.
32. Overall, and in particular on the basis of certain evidence pointing to a different competitive landscape between NI and the Republic of Ireland, the OFT has, on a cautious basis, taken NI as being a distinct market from both the Republic of Ireland and the rest of the UK.

Great Britain – national versus local areas

33. In relation to private customers, the Parties' pricing strategy is consistent throughout GB. However, in contrast, there is variation in the pricing, availability and types of telecare service offered by local authorities across England, Scotland and Wales.
34. The NHS Purchasing and Supply Agency (PASA) told the OFT that some nations are more adept at promoting and providing telecare services than others. Perhaps as a result, there are notable variations in the uptake of services in each nation. For instance, a notably higher proportion of the population in Wales are users of local authority/housing association-provided telecare services. In addition, there is considerable variation in the Parties' representation across each nation (they both have little presence in Scotland or Wales) which might suggest a market narrower than GB as a whole.
35. Even within a nation (for example, England), the geographic ambit of the supply of pendant alarm services, from the demand-side, could be, at its narrowest, each local area (in England this would be a local authority) that oversees telecare provision given that each local authority will have its own eligibility, pricing and service provision.

36. The role that local authorities play in the provision of services to the elderly differs across different authorities, which could in theory enable some price discrimination by the Parties by local area depending on the level of local authority provision. However, the OFT is aware that such a narrow market definition (that is, by local authority area) is appropriate only if the Parties could profitably raise prices within a local area. The fact that the Parties maintain standard prices across GB, together with their national branding and single monitoring centre, is indicative that the parties cannot easily price discriminate on such a local level.¹⁶
37. The OFT has therefore considered geographic market at a GB level, but has also investigated whether its conclusions would be affected if there were a national (that is, England, Scotland and Wales) or local aspect relating to supply.

UNILATERAL EFFECTS

Parties' overlap in the supply of personal pendant alarm services to paying individuals

38. As a result of an absence of reliable independent data sources, the OFT has found it difficult in this case confidently to reach conclusions on the size of overlaps between the Parties' activities, particularly at the local level. Therefore the figures which follow should be viewed as indicative, rather than precise.

Great Britain

39. In GB, Aid Call has around [30,000 to 35,000] customers and SeniorLink Eldercare has around [5,000 to 10,000], a total of [35,000 to 45,000] customers. The Parties told us that the average length of contract is around [] years. On this basis, Aid Call would appear to win around [5,000 to 10,000] new customers per year, and SeniorLink Eldercare around [0 to 5,000].

¹⁶ The OFT received no evidence to suggest that the effect of the merger would be to 'tip' the parties into changing their business model so significantly such as to allow them to differentiate in terms of local authority area.

40. Based on the Parties' figures, and also discussions with third parties, the OFT estimates that total supply to self-payers by private suppliers, including the Parties (and excluding housing associations or local authorities), is around 60,000. The Parties therefore together account for just over two thirds of this supply.
41. However, as discussed above, it is appropriate also to include local authority supply to self-payers within the relevant market when calculating market shares. The OFT has found that there are significant variations across local authorities in terms of the extent of supply to self-payers (and within that the extent of subsidy to those self-payers). As a result it is difficult to be precise as to what proportion of local authority provision might be properly regarded as within a market of supply to paying individuals.
42. The OFT has therefore relied on evidence obtained by the Parties from the Telecare Services Association (TSA) that between 10 and 20 per cent of all local authority supply was made to paying individuals, or around 55,000 to 110,000 connections. Taking a cautious approach, and using the more conservative end of this range (10 per cent), this suggests that the Parties' combined share of supply in GB of supply to private individuals would be around [30 to 40] per cent.

Northern Ireland

43. In NI, Aid Call has around [5,000 to 10,000] customers, and SeniorLink Eldercare around [5,000 to 10,000], a total of [10,000 to 20,000] customers.¹⁷
44. Based on the Parties' figures, and also discussions with third parties, the OFT estimates that total supply to self-payers by private suppliers is
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around 20,000¹⁸. The Parties therefore together conservatively account for between 75 and 90¹⁹ per cent of this supply.

45. However, as discussed above, it is appropriate also to include housing association supply to self-payers within the relevant market when calculating market shares. On this basis, and based on evidence from the Parties, the Parties would have a combined market share of between 60 to 75 per cent of supply to paying individuals (the Parties have estimated Aid Call had a [30 to 40] per cent share of supply and SeniorLink Eldercare around [20 to 30] per cent share of supply). This calculation would include provision to self-payers by Fold Housing Association which would account for around 10 per cent of supply, and the other private suppliers referred to in paragraph 44.

Consideration of possible unilateral effects theory of harm

46. As noted above, the OFT is cautious about placing undue reliance on share figures alone given the absence of reliable independent data sources, the fact that not all paying local authority customers are fully self-funding and the OFT's more general concern about concluding on a particular market definition in this case (see earlier).
47. The OFT has therefore focused directly on available evidence of the constraint, if any, that the Parties provided on each other and the constraints provided by other commercial providers as well as by local authorities and housing associations.
48. The OFT considered the possible customer set that could be adversely affected by the merger.
49. In GB, the potential concern considered by the OFT is that two particular customer groups may be vulnerable to a worsening of the merged parties' product or service offering, namely:

¹⁸ Based on Aid Call and SeniorLink Eldercare's turnover in NI (around £[100,000 and £[100,000 respectively). The total size of this market is unclear but appears to be anywhere between £1.5 - 3 million. The other confirmed parties who provide services are McElwaine (who the OFT believes has a significantly lower number of connections than the Parties). The Parties also identified ADT and Electronic Specialists as providers to self-payers although OFT has not been able to confirm levels of connections by these, as well as a category of 'other' unidentified providers. The OFT has not included the category of 'others' in its estimations.

¹⁹ Depending on whether or not ADT and Electronic Specialists are included.

- (i) those customers living within local authorities where local provision is absent or restricted and so the customers will likely have to turn to private sector solutions (ie including the Parties), and
 - (ii) those individuals unaware of, or unwilling to source from, their local authority.
50. In NI, there is a total lack of provision, and therefore constraint, from local authorities. Consequently there exists at least, prima facie, the potential for the Parties to raise prices (or lower their non-price offering) given their high combined market share.
51. In order to determine whether these potential concerns in fact create a realistic prospect of a substantial lessening of competition, the OFT has examined in turn:
- (i) the extent of customer shopping around and switching, to see how competition is currently operating in the market
 - (ii) the constraint on the Parties from other private providers, to understand how they would constrain the Parties post-merger
 - (iii) the constraint on the Parties from local authorities and housing associations, to understand how they would constrain the Parties post-merger
 - (iv) the evidence on the extent of closeness of competition between the Parties, to understand what competition would be lost by the merger, and
 - (v) the connection with the Charities as a constraint on the Parties, to understand whether the Parties' commercial actions are limited by their wider groups.

Extent of customer shopping around and switching

52. The OFT considered when in the life cycle of the pendant alarm product and service customers could switch and when they do actually switch. This information is relevant to determining when competition takes place

between rival product suppliers and the extent of that competition between the Parties pre-merger.

53. The OFT understands that there is no actual restriction on a customer's ability to switch once they have an alarm and that there is nothing preventing customers from terminating an agreement with the Parties and obtaining a pendant alarm from a local authority. However, the evidence presented by the Parties indicates that switching is unlikely to occur once a customer has a contract. This is consistent with what the OFT might expect where the payment model requires a payment upfront for the installation/cost of unit which the customers would lose should they change suppliers.
54. Aid Call routinely records examples of both existing customers who have opted for an alternative provider and prospective customers who are shopping around (and who may not even ultimately choose to purchase a telecare system). Aid Call provided evidence confirming that there is a relatively limited level of shopping around before customers purchase a system and that very few customers switch to another provider once they have selected, and entered into a contract with a provider. More specifically, the evidence showed that:
- In the case of prospective customers, if customers decide not to take up an Aid Call system it is often because they prefer another system or a wholly different cost base, rather than because they have switched to an alternative provider. Aid Call presented data showing that out of [20,000 to 30,000] people that inquired about purchasing an Aid Call telecare product, some [5,000 to 10,000] went on to make the acquisition, whereas just [200 to 500] of those who had a reason for not purchasing gave as their explanation that they had purchased from an alternative private provider.²⁰
 - As a typical example of customer switching, Aid Call informed the OFT that in June 2009, [20 to 50] customers chose to move to a different supplier. Half of these recorded some form of free

²⁰ 820 identified the reason as having purchased a system from a local authority. The OFT recognises that the weight that can be attached to these data is reduced by the significant number of people (8,002) who gave no reason for not acquiring an Aid Call system.

supply as the reason for the switch (including free supply by local authorities). Others transferred to some form of more sophisticated telecare system. Given that Aid Call would typically gain around [500 to 1,000] new customers a month, the OFT concluded that a relatively low level of switching occurs.

55. The evidence provided to the OFT therefore suggests that there is only limited competition between providers at the time of initial purchase, and almost negligible amounts of switching in the lifetime of a contract.

Constraint on Parties from other private providers

56. Other private providers are present in the market for the provision of pendant alarms to individual customers, although in terms of share of installed base alone none is as large as the Parties. However, competitive pressure in this market may potentially be measured more accurately by the extent to which a supplier is winning new business than by installed base (and this is a market that has seen new entry).
57. In GB, Tunstall and Invicta are each estimated to be about half the size of SeniorLink Eldercare in the provision of services to self-pay customers (approximately three to four per cent each) although they are very much smaller than Aid Call. Both of these providers are significant suppliers of services to local authorities and housing associations, and so may be well placed to grow their position in the supply to self-payers. It is not clear, however, to what extent these providers may be hindered (if at all) by the fact that they do not possess the same brand or charity status as the Parties, or indeed, that they want to move in this direction. As a result, the OFT, in taking a cautious approach, has not relied on these providers expanding significantly in supply to self-payers.
58. In GB, the OFT is also aware that SAGA have entered the GB market in the last two to three years and have already gained more than [] customers.²¹ SAGA informed the OFT that it fully expected to gain another [] customers in the next year now that it has established itself. This would give it a similar share of new connections as SeniorLink Eldercare, although these new connections will primarily come from

²¹ Most of these are already members of SAGA and have received advertisements in SAGA magazine which has a circulation of around 600,000.

SAGA's existing customer base (ie they will be new customers as opposed to existing customers as opposed to switching away from another provider).

59. In NI, there is only one other private provider, McElwaine, present, which accounts for a small proportion of supply to paying individuals.
60. On the basis of the above, the OFT considers that there is some evidence of alternative and, in the case of SAGA, growing provision from other private sector providers in GB. However, the OFT recognises that this supply is currently on a more limited basis than either of the Parties, and therefore – in and of itself – is not sufficient to constrain the Parties post-merger. In NI, however, this alternative source of private sector supply is not materially present.

Constraint on the Parties from local authorities and housing associations

61. The OFT understands that the provision of pendant alarm services by local authorities to private individuals varies by region - such that not everyone would be entitled to subsidised services. However, in practice it appears that – for many of the local authorities that the OFT spoke to – that provision is fairly wide and few instances exist where people have been turned down for the system. While it is technically possible that the provision of telecare services by a local authority might be non-existent in some areas of the UK, the NHS informed the OFT that this scenario would be very rare. Even in those limited cases where provision may not be available, the OFT understands that local authorities will typically provide a list of one or more potential private providers.
62. During the course of the OFT's investigation, it has not been possible to find out whether all of the some 300 or so local authorities in GB each supply to paying individuals, and there seems to be a great degree of variation in pricing and service levels. However, this has not proved decisive in fact, given that the OFT has looked at the constraint of local authorities on an aggregated basis given that it does not believe that it would be feasible for the Parties (given their national offering / single call centre etc) to price discriminate between customers in different local authority areas. The OFT believes that it is not necessary for every local authority in the country to provide a service in order for there to be, in

aggregate, a constraint posed by local authorities on the Parties at a national level.

63. The Parties provided evidence in the form of an extensive survey of local authorities. They searched the websites of the 156 local authority members of the TSA to find the extent to which they promoted the provision of pendant alarm services to self-payers. The results of the survey indicated that almost all local authorities provided some form of paid-for service, although this survey did not make clear how many connections these would account for. The survey provided a wide range of charges available – for example across GB weekly monitoring charges can be from £1 to £4 a week (which is within the range of charges made by the Parties).
64. As noted above, the Parties estimate that some 10 to 20 per cent of local authority connections are to the self-pay sector. The OFT has not been able to obtain detailed information on the level of self-payers for each of the some 300 local authorities in GB and so the OFT is not in a position to confirm that this estimate is correct. However, its own limited investigation indicates that the vast majority of local authorities will provide some services on a paid-for basis, albeit that, as already discussed, many of these may be on a subsidised basis – or it may not actually be clear whether the service is in fact subsidised, full pay, or indeed for profit.
65. At the most conservative end of the above estimate, therefore, local authority provision to self payers might be around equal to the provision by commercial providers to private payers as identified by the OFT. The level of local provision to private pay customers is likely to vary between England, Scotland and Wales because of the differing policies there, as it may between local authorities.²² However, local authorities' level of supply to self-pay customers, even on a conservative estimate, is believed to provide potential customers with substantial alternative

²² Some councils the OFT spoke to indicated that they would be willing to supply telecare services to anyone who was willing to pay for the system (albeit maybe at full cost). Other councils (particularly those only supplying these services only on either a free or subsidised basis) told the OFT that there must be a level of need for an elderly person to receive the system. However, the same Councils also generally indicated that it was not a common occurrence for people to enquire with the council who did not (in their view) require the system and therefore in practice few people appear to be subsequently turned down by councils.

source of supply and is likely to act as a considerable constraint on the behaviour of the merged parties.

66. Data provided by Aid Call also substantiates the proposition that the Parties face a relatively large constraint (in particular, when compared to that from other private sector providers) from local authorities.

- As noted above, Aid Call presented data showing that out of 26,000 people that inquired about purchasing an Aid Call telecare product, 820 stated that they did not ultimately do so because they acquired a product from a local authority, whereas the equivalent number who stated that they went on to purchase from a private sector provider was just 240.
- Aid Call contacted a random selection of 40 of 154 prospective customers who chose an alternative provider having already enquired about purchasing a system from Aid Call. Of these, 34 (or over 70 per cent) chose to use a local authority system (although the majority decided this either because it was free or cheaper than Aid Call). Of the 40 sampled only three chose another private provider.

67. In NI, the situation is somewhat different given that no local authority provision exists. The only major domestic player (other than the Parties) in NI is Fold Housing Association. In NI, through discussions with it, the OFT estimates that Fold may hold around 10 per cent of the self-pay market (as well as being a major player in provision through housing associations). Fold's market share is increasing slowly notwithstanding that its services are substantially cheaper than the Parties (for contracts up to, at least, five years). The OFT believes that a plausible explanation for this is that Fold tends to operate on a rental basis for its equipment and that most of its customers do not qualify for the NI Community Grant. This grant can be worth over £200 – and a large proportion of each Party's customers receive the subsidy. Fold also acknowledged that the Parties are trusted brands in the self-pay market and that, because of this, they obtain many recommendations from health professionals who are hard to convince to advocate the use of another provider.

Evidence on extent of closeness of competition between the Parties

68. The sections above describe how the Parties are constrained to some degree by other private sector providers and, to a greater extent in GB, by local authorities. In NI, a housing association – Fold - also plays a role. In this section, the OFT has considered the extent to which the Parties are in fact close competitors. Although the Parties are the largest private providers of pendant alarm services in GB and NI to individual customers, in terms of installed base, it does not necessarily follow that they are each other's closest competitor for new and existing customers. While there are similarities between the Parties, especially given their association with well known charities representing the elderly, there is evidence that competition is not any stronger as between the Parties than with any other provider of pendant alarm services in the private pay sector (or indeed with local authority providers).

(i) Different routes to market

69. Aid Call, which has a [higher] marketing budget [than SeniorLink Eldercare], informed the OFT that its primary routes to market in GB are, first, through off the page media advertising (around 30 per cent) followed, second, by sales through Age Concern shops. A third party commented that, in contrast, SeniorLink Eldercare was less visible in the market place, which may be indicative of it being less focused on marketing. By way of further differentiation, SeniorLink Eldercare has not had access to Help the Aged's network of shops.²³ As a result, SeniorLink Eldercare's main sources of enquiries have been its website (70 per cent) and word of mouth (30 per cent). In NI, Aid Call gains most of its customers through recommendations from 'friends and relatives' of the pendant user (around 50 per cent) and from social services (around 30 per cent). The Parties did not provide specific information about SeniorLink Eldercare's route to market for NI. The OFT therefore believes that there is some evidence to indicate that the Parties' competitive propositions are differentiated by use of different routes to market.

(ii) Internal documents

²³ Although the OFT does understand that SeniorLink Eldercare had made tentative steps towards running retail promotions within Help the Aged charity shops.

70. The internal documents of the Parties do not indicate that they monitor each other closely or indeed that they monitor competitors/local authorities (for discussion on local authorities, see above). This contrasts with other situations in which merging parties that compete vigorously pre-merger will track each other's competitive offering closely and will seek to match or beat each other in terms of price or service. The OFT's review of the internal documents does not indicate this level of competitive interaction, or indeed any material competitive interaction, between the Parties.

(iii) Different types of target customer

71. Help the Aged has historically provided free pendant alarms (although customers would have to pay an ongoing monitoring charge) to those meeting its means test, representing around 60 per cent of English customers of the SeniorLink Eldercare business. It has therefore had a customer base of less wealthy subscribers. By contrast, Aid Call's internal documents indicate that they have tended to target more wealthy clients.²⁴ The OFT therefore believes that there is some evidence to indicate that different customer demographics are being targeted by each of the Parties.

(iv) Different pricing

72. Although different pricing strategies are in no way conclusive of a lack of competition, the fact that the Parties appear to have significantly different pricing strategies in both GB and NI²⁵ may, given the similarity of the products in question, in this case support the proposition that pricing competition between them is not strong. Although pricing differentials are dependent on contract lengths, SeniorLink Eldercare was consistently less expensive after the first year of usage for each party's most popular package (the package's initial cost in the first year was more expensive). Further, there is no evidence that the Parties have ever sought to match each other's prices. Nor was there evidence of any adverse impact on Aid Call's sales following an increase in January 2009

²⁴ Aid Call have stated that the proposition that its customer base consists of wealthy individuals is decreasingly true now, as shown by the number that choose local authority provision having shopped around between alternatives, and by take-up of Aid Call's alternative pricing options.

²⁵ While some of the parties' upfront fee charges are comparable (taking into account installation charges) the ongoing monitoring charges vary significantly (generally by more than 20 per cent).

in the cost of installation of one of its pricing plans (from £99 to £129), nor any corresponding uptake for SeniorLink Eldercare.²⁶ Although this evidence is far from conclusive, the evidence available on pricing was not supportive of particularly strong price competition between the parties.

(v) Conclusion on closeness of competition between the Parties

73. The OFT does not believe, on the evidence available to it, that the Parties can be characterised as competing aggressively with each other in relation to pricing. Further, the OFT has obtained little evidence that would point to the Parties competing on any other non-pricing aspect of their offering (an example of which could be over such factors as replacement policies, call waiting times etc). Although the OFT cannot entirely rule out the possibility that the Parties competed pre-merger, on the totality of the evidence provided, the OFT believes that the level of competitive tension between them can be characterised as being muted at best.

Connection with the Charities as a constraint on the Parties

74. To varying degrees, the Parties benefit from the link with the Charities to advertise and sell their products and through which customer introductions can be made. Third parties commented that they believe the charity names to be strong and trusted brands. The Parties argued that it is likely that SeniorLink Eldercare and Aid Call may be constrained from raising prices or providing a worse service by the charity association and the fact that the Charities (or in due course Age UK) need to maintain a good reputation.
75. An example of Aid Call's sensitivity in reputational terms to consumer perceptions of its pricing occurred in August 2007, when, [].
76. The OFT therefore believes that, whilst this factor does not in itself to rule out the prospect of any lessening of competition between the

²⁶ The value of this evidence is somewhat limited given that Aid Call's sales of another pricing plan with a lower upfront installation fee (though higher ongoing monitoring charge) increased at the same time. To some extent, this is therefore more akin to a change in pricing model, rather than a straightforward price increase. Aid Call also saw a substantial uplift in internet-sales (to which the price increase did not apply).

Parties, the magnitude of any adverse effects on customers that would result from a lessening of competition may be constrained to some degree by the fact that the Parties are part of the Charities.

Conclusion on unilateral effects theory of harm

77. In GB, for the reasons given above, the OFT concludes that there is only limited competition between the parties, and that they face at least as substantial (if not much more substantial) a constraint from local authorities as they do from other private providers. On this basis, the OFT does not consider that there is a realistic prospect that the Parties could unilaterally cause harm to the consumers in GB. The OFT did not receive any information during its investigation to suggest that the same conclusion would not apply if assessed on a national (eg England, Wales and Scotland) basis.
78. In NI, the transaction raises prima facie concerns given the high market shares of the Parties and the lack of constraint from either other private providers or local authorities. While the OFT has considered that competition between the Parties pre-merger was somewhat muted, it has concerns that the complete removal of any such competition that did exist would enable them to raise prices or alter other aspects of their offering to the detriment of consumers. Accordingly, the OFT believes that the transaction has or may be expected to result in a substantial lessening of competition with respect to the supply of personal pendant alarms in NI.

COORDINATED EFFECTS

79. Coordinated effects are not considered relevant in this case as the merger further increases the already asymmetric structure of the market meaning that one of the essential conditions for coordinated effects to arise is not present. No concerns were raised by third parties in relation to any potential coordination theory.

BARRIERS TO ENTRY OR EXPANSION

80. The OFT has considered whether entry (or expansion) is likely to occur in a timely manner and be of sufficient scale so as to prevent any substantial lessening of competition arising from the merger in NI.
81. Third parties were universally of the view that the main difficulties for *de novo* entry to the market for private supply was the strong trusted brands of the Parties, the incremental nature of gaining customers and the scale of operation needed to run an efficient monitoring centre. It is not sufficiently clear that Fold, as the only other notable provider to self-payers, in NI, intends to expand this area of supply.
82. Given the lack of evidence on future expansion by Fold in NI, combined with the evidence that *de novo* entry would be [] difficult, the OFT does not believe new entry or expansion is likely, timely or of a sufficient scale in relation to the provision of services to individual self-pay customers in NI.

THIRD PARTY VIEWS

83. Third Party views have already been discussed in other parts of the decision where appropriate. The majority of third party respondents were generally unconcerned about the transaction. One party had concerns focusing on the combined strength of the Parties in the charities sector.

ASSESSMENT

84. The Parties main area of overlap is in the provision of personal pendant alarms to individuals in GB and in NI which are considered separate markets. While there is some suggestion that the market within GB could be viewed from the demand side as being more local, the balance of the evidence indicates that it is more appropriate to consider the market as being GB wide.

Great Britain

85. While the Parties share some commonalities, in particular the backing and support of charities supporting the elderly, consideration of a range

of factors, including pricing structures, routes to market and customer demographics all suggest that competition between them is muted.

86. Post merger the Parties will be constrained in GB by the presence of both other private providers and local authorities, most of which provide pendant alarm services, to some degree, to paying customers.
87. Moreover, SAGA has been able to enter the market in the last two to three years and is looking to expand its business. It predicts it will gain a similar number of new connections to SeniorLink Eldercare over the next year.
88. On the balance of all the evidence it has received, the OFT believes that there is no realistic prospect of a substantial lessening of competition arising in relation to GB.

Northern Ireland

89. In NI, the Parties have very high market shares in the supply of pendant alarm services to paying customers but, significantly, unlike in GB there is little or no local authority provision of such services. There is also a lack of strong competition from other sources, with only Fold Housing Association, and potentially to a much lesser extent several other smaller providers providing connections to individual customers. The evidence available to the OFT suggests that the prospects of new entry and/or potential expansion in NI are limited (more so than for GB).
90. While the OFT has considered that competition generally between the Parties is somewhat muted, it nevertheless has concerns that the complete removal of any such competition between the parties in NI raises a realistic prospect that prices for personal pendant alarms will rise or services deteriorate to individual customers.
91. Consequently, in relation to NI, the OFT believes 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.

EXCEPTIONS TO THE DUTY TO REFER

Introduction

92. The OFT's duty to refer under section 22(1) of the Act is subject to the application of certain discretionary exceptions, including the markets of insufficient importance, or *de minimis*, exception under section 22(2)(a) and the undertakings in lieu exception under section 73(2) of the Act.
93. The Parties argued that the OFT should apply the *de minimis* exception to the duty to refer²⁷ on the basis that the total annual revenue from the Parties' activities is well below £10 million (and indeed is declining).

Undertakings in lieu of reference and *de minimis*

94. As stated in the Dunfermline/BRN case,²⁸ and as explained further in other cases such as BOC/Ineos,²⁹ the OFT believes that it would be proportionate to refer a problematic merger (that is, not to apply the *de minimis* exception) where the OFT considers that it is 'in principle' clearly open to the party or parties to offer a clear-cut undertaking in lieu of reference – but they choose not to do so. This is because the recurring benefits of avoiding consumer harm by means of undertakings in lieu in a given case, and all future like cases, outweighs the one-off costs of a reference.
95. In this case, the OFT believes that a structural remedy – hiving off one of the pendant alarm businesses of the Parties – would not be an effective remedy to the substantial lessening of competition identified given that the NI parts of the Parties' respective businesses are not stand-alone (for example, each party has just one monitoring centre which is based in GB), and therefore not capable of being sold separately.
96. Since the OFT considers that, in principle, a clear cut divestiture package is not available, the OFT accepts that it would not be appropriate, at this

²⁷ See OFT 516 b, November 2007.

²⁸ OFT *Completed acquisition by Dunfermline Press Limited of the Berkshire Regional Newspapers business from Trinity Mirror plc* 4 February 2008.

²⁹ OFT *Anticipated acquisition by BOC Limited of the packaged chlorine business and assets carried on by Ineos Chlor Limited* 29 May 2008.

stage of the analysis, to rule out an evaluation of the *de minimis* exception in this case.

Application of the markets of insufficient importance exception to this case

97. The pivotal issue for the OFT in applying its *de minimis* exception is determining whether the impact of the merger is likely to be particularly significant (such that the *de minimis* exception should not be applied) or more limited (when the OFT may apply the *de minimis* exception).
98. The factors that the OFT considers in making this determination were set out in detail in the BOC/Ineos case and were applied again in FMC/ISP³⁰ and Stagecoach/Cavalier³¹ (in favour of exercise of the discretion) and in Nufarm/AH Marks (against the exercise of the discretion).³² Those factors are:
- market size
 - strength of the OFT's concern (that is, its judgment as to the probability of the substantial lessening of competition)
 - magnitude of competition lost by the merger - durability of the merger's impact, and
 - transaction rationale and the value of deterrence.
99. The OFT has considered each of the factors above in determining whether to exercise its discretion in this case.
100. **Market size** – The OFT considers that the merger creates a realistic prospect of a substantial lessening of competition in the market for the supply and monitoring of personal pendant alarms to private pay customers in NI. Based on the information provided by the Parties and by third parties the OFT has estimated the total size of the market in NI for provision to private individuals as between £2 to 3 million (the Parties estimate it at £2.6 million). At this level the market would be of a size to be a serious candidate for the application of the *de minimis* exception to

³⁰ OFT *Anticipated acquisition by FMC Corporation of the alginates business of ISP Holdings (UK) Limited* 30 July 2008.

³¹ OFT *Completed acquisition by Stagecoach Bus Holdings Limited of Cavalier Contracts Limited* 18 September 2008.

³² OFT *Completed acquisition by Nufarm Limited of AH Marks Holdings*.

the duty to refer.

101. **Strength of the OFT's concerns** – The OFT's belief that the transaction may be expected to result in a substantial lessening of competition for the Parties' customers is on the balance of probabilities (that is, over 50 per cent likely, as opposed to the lower 'is the case' standard in the wording of section 22 of the Act). As a result, the strength of the OFT's belief that harm will result from the merger, although not in itself conclusive, tends to point away from the exercise of the *de minimis* exception in this case.
102. **Magnitude of competition lost by the merger** – The merger causes a reduction in the number of major providers of pendant alarms to individual customers in NI from '2 to 1', as the worst case scenario would not include McElwaine (who is currently very small) and Fold (who is not currently focused on supplying individuals outside of its housing association). This factual pattern would normally present a real possibility of a significant price increase or worsening of product offering without affecting a response from the smaller competitors that remain. However, the OFT's concerns in this regard are somewhat lessened by the fact that the competition that existed between the Parties pre-merger was arguably somewhat muted for the reasons given in the decision. In addition, the existence of a reputational constraint on the behaviour of the Parties may have acted to inhibit the parties from increasing their prices or worsening the other aspects of their services in the way in which a purely 'commercial' operator might. For these reasons, overall, the OFT judges that the magnitude of competition lost by the merger would in fact be significantly less than might normally be expected in other '2 to 1' situations.
103. **Durability of the merger's impact** – In this case, the OFT has not identified any particular factors that suggest that the duration of any substantial lessening of competition arising in NI would be unusually short or long. Although the Seniorlink Eldercare joint venture may be terminated in two years time, it would still have been expected that Help the Aged would have continued, in some form, as a provider of services independently from Aid Call.
104. **Transaction rationale and the value of deterrence** – The rationale of the merger was to combine the Charities. The merger of the two pendant

alarm businesses was largely incidental to this. Considering the very particular circumstances of the current case, the OFT considers it appropriate not to include any deterrence for the purposes of its *de minimis* assessment. This is not a market where consolidation has been commonplace and there is no suggestion that the basis of this merger was the acquisition of market power (indeed the OFT's review indicates that no internal documents either before the merger or immediately subsequent to it have given consideration to merging the Parties' businesses in this area).

105. Overall, the OFT considers that the evidence in this case points towards the impact of the merger being relatively limited both in scope and time. In particular, the size of the market (at £2 to 3 million) is well within the £10 million threshold, the scale of any anti-competitive effects arising from the merger are likely to be limited both in scope and in time. Given the very particular circumstances of the case, the OFT has therefore decided to exercise its discretion not to refer this transaction to the Competition Commission on the grounds that the market is of insufficient importance.

DECISION

106. This merger will therefore **not be referred** to the Competition Commission pursuant to section 22(2)(a) of the Act.