

Completed acquisition by AAH Pharmaceuticals Limited of Medical Advisory Services for Travellers Abroad Limited and Sangers (Northern Ireland) Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6599/16

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 29 June 2016. Full text of the decision published on 10 August 2016.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

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SUMMARY

1. On 1 April 2016, AAH Pharmaceuticals Limited (**AAH**) acquired Medical Advisory Services for Travellers Abroad Limited together with Sangers (Northern Ireland) Limited (together **MASTA-Sangers**) (the **Merger**). AAH and MASTA-Sangers are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties' enterprises have ceased to be distinct and that the turnover test is met. The four-month period for a decision has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties' activities overlap in the wholesale of pharmaceutical products, mainly to pharmacies, dispensing doctors and hospitals.
4. The CMA assessed whether the Merger will result in a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the following possible product frames of reference in which the Parties' activities overlap:
 - (a) Broad-line wholesale of branded ethicals¹ to pharmacies/dispensing doctors.
 - (b) Broad-line wholesale of generic ethicals to pharmacies/dispensing doctors.
 - (c) Broad-line wholesale of branded ethicals to hospitals.
 - (d) Broad-line wholesale of generic ethicals to hospitals.
 - (e) Broad-line wholesale of over the counter (**OTC**)² products.
 - (f) Manufacturer contracts for the broad-line wholesale of pharmaceuticals.³
 - (g) Broad-line wholesale of vaccines.
5. The CMA did not find it necessary to conclude on the appropriate product frame of reference in this case since, as set out below, no competition concerns arise in any of the possible frames of reference identified. In terms

¹ Ethicals are prescription only medicines (ie. medicines that are supplied to patients on the basis of a doctor's or a dentist's prescription). Ethicals may be either branded or generic. Generic drugs are chemically identical or bioequivalent to their branded counterparts, but are typically sold at substantial discounts from the branded price.

² OTC medicines are medicines that can be sold to end consumers "over the counter" without a prescription.

³ Pharmaceutical wholesalers compete for manufacturer contracts and supply to downstream customers (eg. retail pharmacies).

of geographic scope, the CMA assessed the effect of the Merger in those areas where the Parties currently operate and where there is some overlap (mainly in Northern Ireland (**NI**) and the United Kingdom (**UK**) (for the UK in relation to manufacturer contracts for the broad-line wholesale of pharmaceuticals)).

6. The evidence available to the CMA from the Parties and third parties indicates that entry by a broad-line wholesaler – Alliance Healthcare Distribution Limited (hereafter referred to as **Alliance Boots**), a subsidiary of Walgreen Boots Alliance – into the wholesale of pharmaceuticals in NI would be timely, likely and sufficient to prevent a realistic prospect of an SLC as a result of the Merger. The CMA received evidence from Alliance Boots which showed very advanced plans to enter and the majority of third parties indicated that such entry would provide a viable competitor to, and a strong competitive constraint on, the Parties. Third parties also identified Phoenix Healthcare Distribution Limited (hereafter referred to as **Phoenix**), a subsidiary of Phoenix Medical Supplies Limited, as a competitor to the Parties and Phoenix has indicated that, as a direct result of the Merger, it expects to expand its operations in the wholesale of pharmaceuticals in NI.
7. The CMA also found that the Parties will face competitive constraints from other competitors, including constraints from outside the frames of reference:
 - (a) Short-line wholesalers provide a competitive constraint for those products or customers which do not require twice daily delivery; and
 - (b) For supply to hospitals, OTC medicines and vaccines, direct supply from manufacturers as well as, in some cases, short-line wholesalers impose strong competitive constraints on the Parties.
8. In relation to competition for manufacturer contracts, the CMA found that manufacturer contracts are generally negotiated on a national (UK-wide) basis (although some parts of the contract may then be sub-contracted), that the loss of competition resulting from the Merger is small and that Alliance Boots will provide a competitive constraint on the merged entity that is sufficient to prevent a realistic prospect of an SLC.
9. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects.
10. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

11. AAH is a wholly-owned subsidiary of Celesio AG (**Celesio**), which itself is a wholly-owned subsidiary of McKesson Corporation (**McKesson**).
 - (a) McKesson is a United States-based entity which operates in the distribution and delivery of pharmaceuticals and medical equipment; medical supply products; and the delivery of healthcare information technology to healthcare organisations.
 - (b) Celesio is the European pharmaceuticals wholesale and retail division of McKesson. It is the parent company of AAH and Lloyds Pharmacy Limited (**Lloyds**).
 - (i) AAH is a UK-wide pharmaceutical wholesale business. AAH also owns Trident, a short-line wholesaler and a supplier of general sales list (**GSL**) medicines and health and beauty products mainly to retail pharmacies in the UK.
 - (ii) Lloyds is a retail pharmacy business with retail pharmacy contracts across the UK and contracts for outpatient dispensing services to hospitals (ie. the provision of a pharmacy in a hospital).
12. The business that AAH has acquired (**Target Business**) from UDG Healthcare plc (**UDG**), a provider of sales and marketing services, wholesaling, medical equipment, packaging and specialist healthcare delivery services, comprises:
 - (a) Medical Advisory Services for Travellers Abroad Limited (**MASTA**) with its subsidiaries: MASTA Limited (wholly-owned) and Atlas Travel Clinic Limited (wholly-owned by MASTA Limited). MASTA 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; and
 - (b) Sangers (Northern Ireland) Limited (**Sangers**) with its subsidiaries: Blackstaff Pharmaceuticals Limited (wholly-owned), Prima Brands Limited (wholly-owned), J Bradbury Surgical Limited (wholly-owned) and Pharma Services (NI) Limited (50% owned with remaining 50% owned by McLernon Computers (N.I.) Limited). Within the UK, Sangers operates in NI only offering distribution, wholesaling and related services in relation to pharmaceuticals and other products to retail pharmacies, hospitals and other customers.

13. The turnover of MASTA-Sangers in 2014 was approximately £[X] in the UK.

Transaction

14. On 18 September 2015, the Parties entered into a share purchase agreement for the Target Business, which provides for the sale and purchase of the entire issued share capital of the companies comprising the Target Business (and, indirectly, the subsidiaries of such companies) from the various sellers within UDG.
15. The Merger completed on 1 April 2016.

Jurisdiction

16. As a result of the Merger, the enterprises of AAH and MASTA-Sangers have ceased to be distinct.
17. The UK turnover of MASTA-Sangers exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
18. The Merger meets the thresholds under Council Regulation (EC) 139/2004 for review by the European Commission. On 22 January 2016, the CMA made a request to the European Commission to refer McKesson's proposed acquisition of the united drug division and other associated businesses of UDG Healthcare to the CMA for investigation. On 3 March 2016, the European Commission announced its decision to refer the Merger to the UK for review.⁴
19. The preliminary assessment period for consideration of the Merger under section 34A(2) of the Act started on 3 March 2016 and the statutory 45 working day deadline for a decision is 6 July 2016 (including an extension to the preliminary assessment period under section 34A(5) of the Act).
20. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

Counterfactual

21. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie. the counterfactual). For completed mergers, the

⁴ The Merger was part of a wider transaction which was notified to the European Commission. The CMA investigated the aspects relating to the impact of the transaction in the UK and the European Commission investigated the aspects relating to Ireland. See Case M.7818 - MCKESSON / UDG HEALTHCARE (Pharmaceutical Wholesale And Associated Businesses).

CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁵

22. The Parties put forward arguments to support a different counterfactual. They submitted that within the Merger time horizon, Alliance Boots represents a new entrant and will be a strong competitor to the merged entity and this should be considered within the counterfactual. The CMA considers that the available evidence indicates that Alliance Boots would not have entered the market absent the Merger and third parties have not put forward arguments in this respect.
23. The CMA also considered whether to include the hospital pharmacy business of Sainsbury's Supermarkets Limited (**Sainsbury's**) that Celesio AG is attempting to acquire under a separate transaction (*Celesio/Sainsbury's*⁶) and which is currently under investigation by the CMA at Phase 2. The CMA considers that the analysis of the Merger remains the same under this counterfactual. The Parties submitted that Sainsbury's operates only 21 pharmacies in NI (Endnote 1), and in any event, the CMA considers that there is no overlap between Sainsbury's and Sangers as the latter does not operate a pharmacy business.
24. For the above reasons, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

Background

Competition in the wholesale of pharmaceuticals

25. There are four main categories of products sold by pharmaceutical wholesalers in the UK:⁷

⁵ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

⁶ [Celesio / Sainsbury's Pharmacy Business merger inquiry](#)

⁷ Final Merger Notice, paragraphs 69 and 90.

- (a) Ethicals (also known as prescription medicines) are medicines that are supplied to patients on the basis of a doctor's or a dentist's prescription. These can be further subdivided into:
 - (i) Branded products: medicines which are still under patent protection and are sold by the company that initially developed them; and
 - (ii) Generic products: medicines which are chemically identical or bioequivalent to their branded counterparts but are typically sold at substantial discounts from the branded price;
 - (b) OTC medicines are medicines that can be sold to end consumers over the counter, without a prescription;
 - (c) GSL medicines are medicines that can be bought from pharmacies, supermarkets and other retail outlets without the supervision of a pharmacist; and
 - (d) Health and Beauty products.⁸
26. In order to supply these products, pharmaceutical wholesalers compete for:
- (a) manufacturer contracts (ie. the right to distribute pharmaceuticals under exclusive and semi-exclusive arrangements with manufacturers); and/or
 - (b) downstream customers (ie. retail pharmacies, dispensing doctors and hospitals).
27. There are different routes through which pharmaceuticals from manufacturers reach downstream customers and, depending on the route, different types of intermediaries may be involved, as described below:
- (a) Pre-wholesalers: These offer logistical services to pharmaceutical manufacturers (mainly storage and transportation of pharmaceutical products from the manufacturer to wholesalers, hospitals and, in some instances, to pharmacies). Pre-wholesaling services differ from wholesaling in that they are services provided to the manufacturers and do not concern the purchase and sale of pharmaceuticals.⁹

⁸ The supply of GSL medicines and Health and Beauty products is not regulated and, as such, does not need to be carried out by specialist pharmaceutical wholesalers. The supply of these two products is also an ancillary activity for the Parties and the sales account for a small proportion of the Parties' turnover. Given the above, as well as the large number of competitors (at both wholesale and retail level) for these products, these products are not considered further in the competitive assessment.

⁹ Pre-wholesaling is effectively the sale of products from manufacturers to wholesalers, and can be seen as a sub-division of 3rd party logistics.

- (b) Pharmaceutical wholesalers, which include:¹⁰
- (i) full-line wholesalers: these offer the full range of pharmaceutical product lines (over 12,000 product lines) and offer twice daily delivery to the majority of customers for products that are not typically kept in stock by pharmacies;
 - (ii) broad-line wholesalers: these offer a broad range of pharmaceutical product lines (but due to the existence of Solus agreements¹¹, not the full range available) and offer twice daily delivery for the majority of customers; and
 - (iii) short-line wholesalers: A short-line wholesaler offers a smaller range of pharmaceutical product lines (around 3,000 lines) and typically operate on a next-day courier delivery basis. Typically, these are fast moving product lines and generics that sell in large quantities that do not necessarily require frequent deliveries to pharmacies
- (c) Parallel imports: this involves the purchase of pharmaceuticals (typically, branded) from abroad which may need re-packaging because of language differences.
- (d) Direct supply from manufacturers: this involves the direct distribution of pharmaceutical products by manufacturers to pharmacists (with delivery typically through an agency agreement).

28. There are a number of possible contractual arrangements governing the relationships between wholesalers and manufacturers. Each type of arrangement results in a different competitive interaction, as follows:¹²

- (a) Exclusive (or Solus) arrangements: these refer to arrangements in which a manufacturer only uses one wholesaler to distribute its products nationally. A key requirement of being able to tender for these contracts is the ability to supply every retail pharmacy in the UK twice daily. There are also regional exclusive arrangements, where a manufacturer uses one wholesaler exclusively in a region (eg. NI) and other wholesaler(s) in other regions. Under Solus arrangements, once a contract has been awarded to a wholesaler, there is no competition for customers because customers have no choice but to obtain the manufacturer's pharmaceutical products

¹⁰ Anticipated acquisition by Phoenix Healthcare Distribution Limited of East Anglian Pharmaceuticals Limited, 29 June 2005, paragraphs 12 and 13.

¹¹ Solus contracts mean that one company is awarded the right to wholesale a particular product. Alliance-Boots and AAH have both won such contracts.

¹² Final Merger Notice, paragraph 96.

from the holder of the Solus arrangement. Solus arrangements can be implemented under two contractual arrangements:

- (i) Direct to Pharmacy agreement (**DTP**): where the manufacturer pays the wholesaler to deliver products for them. The manufacturer sets all terms of service and price and holds the relationship with the customer and the wholesaler acts as the manufacturers' agent; or
 - (ii) Reduced Wholesale agreements (**RWS**), where the terms of service are tightly controlled and a maximum price is set by the manufacturers (in effect, leaving a very small ability to discount).
- (b) Semi-exclusive (or regional semi-exclusive) arrangements: these refer to arrangements in which a manufacturer uses two to four wholesalers nationally (or in specific regions), under DTP or RWS agreements. In relation to products distributed via semi-exclusive arrangements, there is competition for the manufacturer contracts, and some limited competition for customers at a downstream level for semi-exclusive RWS only.
- (c) Standard Wholesale agreements (**SWS**): under SWS, all wholesalers have access to the pharmaceutical products whether directly from the manufacturers, via pre-wholesalers and/or via parallel imports (ie. the products are not subject to exclusive or semi-exclusive distribution arrangements). In relation to products distributed under SWS, competition occurs between wholesalers for customers at a downstream level, but there is no competition for the manufacturer contracts.
- (d) 3rd Party Logistics (**3PLs**) arrangements: under 3PL arrangements, the wholesaler acting as an agent for the manufacturer, takes a payment from the manufacturer for the delivery of pharmaceuticals to a customer.¹³

Key players in NI pharmaceutical wholesaling

29. The Parties submitted that there are three national broad-line wholesalers operating in the UK and NI and accounting for over 50% of the supply of branded ethicals: AAH, Alliance Boots and Phoenix.
30. [REDACTED] Alliance Boots has held [REDACTED] UK-wide DTP agreement with [REDACTED]. In order to implement [REDACTED], Alliance Boots entered into a contract with Sangers, under which Sangers supplied these pharmaceutical products to customers in NI. [REDACTED]. Following the announcement of the Merger, Alliance Boots issued a notice to Sangers that it intends to terminate the relevant contract under which

¹³ 3PL arrangements are to all intents and purposes the same as Direct to Pharmacy (DTP) contracts.

Sangers distributes on Alliance Boots' behalf in NI (this is considered in more detail in the competitive assessment below).

31. Phoenix is a wholesaler which also owns 100% of the share capital of Numark Limited (**Numark**). Numark is the largest independent community pharmacy organisation in the UK, representing over 2,600 members which belong to the Numark scheme.¹⁴ The Numark scheme is a cooperative buying arrangement (or symbol group), which allows independent pharmacies to take advantage of group purchasing deals to reduce their costs. Under the Numark scheme, Numark sources pharmaceutical products from suppliers and these are distributed almost exclusively to independent pharmacies which belong to the scheme. Numark nominated wholesalers refer to those wholesale suppliers that deliver Numark's products to Numark-branded pharmacies.¹⁵

Vaccines (Retail)¹⁶

32. Lloyds and MASTA both sell vaccines at the retail level. At the retail level, MASTA operates clinics in the UK which specialise in retailing travel vaccinations to end consumers with some flu vaccines also supplied and Lloyds, a retail pharmacy business (see paragraph 11(b)), specialises in flu vaccines with a more limited number of travel vaccines also supplied. These vaccinations may also be provided by doctors, hospitals, pharmacies and other types of clinics.
33. With regard to flu and travel vaccines, the increment at a national (UK-wide) level as a result of the Merger is less than [0-5]%. With regard to local markets, retail overlaps within a 1, 2 or 3 mile radius¹⁷ are extremely small and MASTA sold no more than [X] flu vaccines per annum in any given local overlap. For travel vaccines, in any local overlap (at 1, 2, 10 and 13 miles¹⁸) where there are fewer than 3 remaining competitors to the parties, Lloyds only sold [X] or fewer travel vaccines per annum.
34. Taking into account the low increment in any potential overlap resulting from the Merger, the CMA does not believe there is a credible theory of harm (**ToH**) with regard to the retail sale of either travel or flu vaccines and does not consider them further in this decision.

¹⁴ See <http://www.myp-i-n.co.uk/>

¹⁵ Anticipated acquisition by Phoenix Medical Supplies of Numark plc, 26 September 2005.

¹⁶ Wholesale of vaccines is considered in detail in the competitive assessment.

¹⁷ 3 mile radius is based on an 80% customer catchment distance based on Lloyds customer data.

¹⁸ 10 and 13 mile radii are based on 80% catchment distances based on Lloyds and MASTA customer data.

Frame of reference

35. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA may take these factors into account in its competitive assessment.¹⁹

Wholesale of pharmaceuticals

Product scope

36. The Parties submitted that a single overall market can be defined for the wholesale of pharmaceuticals to all customers. They however noted that, in previous decisions, the pharmaceutical wholesale market has been subdivided on the basis of i) categories of wholesalers (full-line and short-line wholesalers); ii) categories of customers (retail pharmacies, doctors, hospitals); and iii) categories of products (ethicals, OTC, generics). The CMA has considered these segmentations further below.

Categories of wholesalers

37. In terms of the Parties' operations, the Parties submitted that, with regards to:
- (a) broad-line wholesalers, there are three in the UK: Alliance Boots, AAH and Phoenix. Sangers has three regional Solus agreements in NI on an RWS basis;
 - (b) short-line wholesale, AAH owns a short-line wholesaler (Trident);
 - (c) 3PLs, AAH acts as a 3PL for its DTP contracts, and so does Sangers for its Alliance Boots contract; and
 - (d) pre-wholesaling, Sangers' 3PL operations are limited to its contract with Alliance Boots.

¹⁹ [Merger Assessment Guidelines](#), paragraph 5.2.2.

38. In previous decisions, the CMA and its predecessors²⁰ (as well as the European Commission²¹) have commonly subdivided the types of wholesalers into full- and short- line wholesalers (see the definition at paragraph 27(b)). The Commission has previously treated full-line wholesaling as a distinct product market from short-line wholesaling due to the differences in product range offered, price and number of deliveries; however, the CMA and its predecessor bodies have recognised that short-line wholesalers do provide some degree of competitive constraint for some product lines.
39. The Parties submitted that due to changes in the market from the emergence of Solus contracts, no one company can stock the full range of pharmaceuticals and as such full-line wholesalers no longer exist. They state that because the demarcation between full-line wholesalers (who can supply the full range) and short-line wholesalers (who cannot supply the full range) no longer exists, all wholesalers can only provide some of the products available and differentiating between different types of wholesalers is not appropriate. The Parties instead refer to broad-line wholesalers which provide a broad range of pharmaceutical product lines (but due to the existence of Solus agreements, not the full range available) and offer twice daily delivery for the majority of customers. The CMA has considered in this case whether broad-line wholesalers should be considered separately from short-line wholesalers.
40. Short-line wholesalers tend to provide high-volume products which can be delivered less frequently (typically on a next-day basis). Broad-line wholesalers stock all of the products short-line wholesalers do and all other products that customers may need (notwithstanding those branded products which are under Solus agreements) and are able to deliver twice-daily. Pharmacies told the CMA that broad-line wholesalers are much stronger competitors to each other than short-line wholesalers, parallel imports and direct supply from manufacturers are to broad-line wholesalers. If twice daily delivery is needed, then broad-line wholesalers are the only choice and therefore there is no demand-side substitution. The differences in delivery patterns and stock suggests that pharmacies would face difficulties in securing necessary supplies in a timely way should they switch from broad-line to short-line wholesale supply and it is not clear that a short-line wholesaler could easily become a broad-line wholesaler. The competitor set

²⁰ Anticipated acquisition by Phoenix Healthcare Distribution Limited of East Anglian Pharmaceuticals Limited, 29 June 2005, paragraphs 12 and 13.

²¹ Case M.7818 - MCKESSON / UDG HEALTHCARE (Pharmaceutical Wholesale and Associated Businesses), paragraph 15.

appears to be different between broad-line wholesalers and short-line wholesalers in NI.

41. Based on evidence from third parties and the fact that short-line wholesalers have a limited range of product lines and less frequent delivery than broad-line wholesalers, the CMA in this case considers broad-line wholesalers to be in a separate frame of reference from short-line wholesalers. However, the CMA recognises that there may be some level of competitive constraint exerted by short-line wholesalers on broad-line wholesalers in certain circumstances and therefore has taken this into account in the competitive assessment.

Categories of customers

42. In previous decisions²², demand for pharmaceutical wholesaling has been noted as coming from three main categories of customers: retail pharmacists, dispensing doctors, and hospitals. In *AAH Pharmaceuticals/East Anglian Pharmaceuticals*²³, it was also noted that hospitals have different product needs and purchasing and delivery patterns compared with retail pharmacies and doctors. The decision also found insufficient evidence to suggest that supply to dispensing doctors exhibited sufficiently different characteristics from supply to retail pharmacies to define them as a separate segment.
43. The CMA has not received any evidence to support departing from previous precedent and has therefore considered retail pharmacies and dispensing doctors on the one hand and hospitals on the other separately in the competitive assessment.

Categories of products

Ethical medicines and OTC medicines

44. In previous decisions²⁴, the pharmaceutical wholesale industry has been subdivided on the basis of two principal categories of product: ethical medicines and OTC medicines (see definitions in paragraph 25). Ethicals require a prescription and are likely to face different conditions of competition to OTC medicines.²⁵ The CMA and its predecessor bodies have taken the view that

²² Case M.7818 - MCKESSON / UDG HEALTHCARE (Pharmaceutical Wholesale And Associated Businesses), paragraph 15.

²³ Anticipated acquisition by AAH Pharmaceuticals Limited of East Anglian Pharmaceuticals Limited, 3 December 2003, paragraph 17.

²⁴ M.4301: Alliance Boots/Cardinal Health, 22 September 2006, paragraphs 16 to 18.

²⁵ On the demand side, a prescription product is not likely to be substitutable in many cases for an OTC product, although there will be exceptions. On the supply side, not all wholesalers will have access to the ethical that a pharmacist requires.

the supply of ethical medicines is a separate market from the supply of OTC medicines. The CMA has not received any evidence to support departing from this precedent.

Branded and generic products

45. The CMA also notes that branded products (produced by a particular manufacturer) and generic products (produced by any manufacturer) are likely to face different constraints. This is because if a prescription is given for a branded product, there is no effective substitute from the pharmacists' perspective for that product. On the supply side, not all wholesalers have access to branded products for example due to the existence of Solus contracts.²⁶ The CMA considers that conditions of competition are different for branded and generic ethical products and, as such, has assessed them separately.

Vaccines

46. In relation to the wholesale of vaccines, MASTA-Sangers supplies flu and travel vaccinations in GB and NI through MASTA, a specialist wholesaler and retailer of vaccinations. AAH is a significant broad-line and short-line wholesale supplier and supplies flu and travel vaccinations to pharmacies, dispensing doctors and hospitals as part of its more general pharmaceutical wholesaling business. Therefore, there is an overlap in the wholesaling of flu and travel vaccines in the UK (including, but not limited to NI). The CMA considers that conditions of competition are similar for flu and travel vaccines (eg. these need cold-chain facilities) and, on a cautious basis, assessed these together but separately from other pharmaceuticals (which do not need cold-chain facilities).
47. For the reasons set out above, the CMA has assessed the market separately according to the type of product being supplied.

Conclusion on product scope

48. For the reasons set out above, on a cautious basis, the CMA has considered the impact of the Merger in the following product frames of reference:
- (a) Broad-line wholesale of branded ethical products to pharmacies/dispensing doctors.
 - (b) Broad-line wholesale of generic ethical products to pharmacies/dispensing doctors.

²⁶ Approximately 86% of branded ethical products are delivered under a restrictive wholesale agreement in NI.

- (c) Broad-line wholesale of branded ethicals to hospitals.
 - (d) Broad-line wholesale of generic ethicals to hospitals.
 - (e) Broad-line wholesale of OTC medicines.
 - (f) Manufacturer contracts for the broad-line wholesale of pharmaceuticals.
 - (g) Broad-line wholesale of vaccines.
49. The CMA has taken competitive constraints from outside these frames of reference (ie. short-line wholesalers and direct supply from manufacturers) into account in its competitive assessment.
50. However, as no competition concerns arise on any plausible product market definition (whether segmented on the basis of categories of wholesalers, customer and product categories), the exact scope of the relevant product market can be left open.

Geographic scope

51. The Parties' activities primarily overlap in the wholesale of pharmaceuticals in NI, as Sangers is not active in the wholesale of pharmaceuticals elsewhere in the UK. The UK may be relevant in relation to manufacturer contracts for the broad-line wholesale of pharmaceuticals.
52. The Parties submitted that there are several factors that point towards a national geographic market (ie. UK-wide), as follows:
- (a) the regulatory environment for licensing and supervision is the same throughout the UK;
 - (b) both broad- and short-line wholesalers in the UK offer national coverage;
 - (c) the same NHS list prices apply throughout the UK; and
 - (d) for the majority of branded ethicals that are subject to some form of restricted distribution, agreements with manufacturers are negotiated at a national level and regional contracts are awarded only by exception.

53. In previous cases relating to the wholesale of pharmaceuticals (eg. *Boots/Alliance*²⁷; *Phoenix/EAP*²⁸; *McKesson/UDG*²⁹), the Commission and UK competition authorities have identified regional dimensions of competition and have found it most appropriate to consider the relevant geographic market at both national and sub-national levels.
54. Responses from third parties indicate that manufacturers typically tender for contracts on a national (or UK-wide) basis while pharmacies typically prefer a wholesaler with a regional presence, such as having a locally situated depot, particularly for NI.
55. On the basis of the evidence above, and on a cautious basis, the CMA has assessed the effect of the Merger in those areas where the Parties currently operate and where there is an overlap (mainly in NI). The CMA has therefore assessed the Merger on both a national and a regional basis for manufacturer contracts and on a regional (ie. NI only) basis for the wholesale of pharmaceuticals (assessed with reference to the product markets as set out above) to hospitals, pharmacies and dispensing doctors.
56. However, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Conclusion on frame of reference

57. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) Broad-line wholesale of branded ethicals to pharmacies/dispensing doctors in NI.
 - (b) Broad-line wholesale of generic ethicals to pharmacies/dispensing doctors in NI.
 - (c) Broad-line wholesale of branded ethicals to hospitals in NI.
 - (d) Broad-line wholesale of generic ethicals to hospitals in NI.
 - (e) Broad-line wholesale of OTC medicines in NI.

²⁷ Anticipated acquisition by Boots plc of Alliance UniChem plc, 6 February 2006; paragraph 22.

²⁸ Anticipated acquisition by Phoenix Healthcare Distribution Limited of East Anglian Pharmaceuticals Limited, 29 June 2005, paragraph 23.

²⁹ Case M.7818 - MCKESSON / UDG HEALTHCARE (Pharmaceutical Wholesale And Associated Businesses), paragraph 24.

- (f) Manufacturer contracts for the broad-line wholesale of pharmaceuticals in NI.
- (g) Manufacturer contracts for the broad-line wholesale of pharmaceuticals in the UK.
- (h) Broad-line wholesale of vaccines in the UK.

Competitive assessment

Horizontal unilateral effects

58. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.³⁰ Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in relation to:

- (a) Broad-line wholesale of branded ethicals to pharmacies/dispensing doctors in NI.
- (b) Broad-line wholesale of generic ethicals to pharmacies/dispensing doctors in NI.
- (c) Broad-line wholesale of branded ethicals to hospitals in NI.
- (d) Broad-line wholesale of generic ethicals to hospitals in NI.
- (e) Broad-line wholesale of OTC medicines in NI.
- (f) Manufacturer contracts for the broad-line wholesale of pharmaceuticals in the UK.
- (g) Manufacturer contracts for the broad-line wholesale of pharmaceuticals in NI.
- (h) Broad-line wholesale of vaccines in the UK.

³⁰ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

ToH1 - Horizontal unilateral effects in the broad-line wholesale of branded ethicals to pharmacies/dispensing doctors in NI

Shares of supply

59. The Parties provided information on the relevant shares of supply as shown in Table 1 below. The CMA notes that the shares of supply are high and raise *prima facie* competition concerns, if Alliance Boots' share of supply is included within Sangers' share of supply.

Name	2014		2015	
	Value (£)	Share	Value (£)	Share
AAH (excluding Trident)	[redacted]	[10-20]%	[redacted]	[20-30]%
Sangers	[redacted]	[20-30]%	[redacted]	[10-20]%
Combined AAH (excluding Trident) and Sangers	[redacted]	[30-40]%	[redacted]	[30-40]%
Alliance Boots (excluding OTC direct) which are all distributed by Sangers	[redacted]	[60-70]%	[redacted]	[60-70]%
Phoenix	[redacted]	[0-5]%	[redacted]	[0-5]%
Total	[redacted]	100.0%	[redacted]	100.0%

Table 1: Parties' estimates of shares of supply by value for the broad-line wholesale of branded ethicals to pharmacies/dispensing doctors in NI

Parties' views

60. The Parties submitted that Alliance Boots plans to enter the market and would be a viable competitor to the Parties, considering its large share of supply as shown in the Table above.

61. The Parties told the CMA that the majority of branded ethicals are supplied under DTP and RWS, as part of exclusive or semi-exclusive arrangements, with pharmaceutical manufacturers³¹ and, as such, the Parties would have limited ability (if any, under DTP) to affect prices and service quality to customers. In particular, they noted that:

- (a) Sangers does not compete in NI for Solus contracts (which are national) and DTP contracts.
- (b) For non-Solus contracts, Sangers [redacted]. Sangers has only [redacted] contracts, worth around £[redacted], under RWS for [redacted]³².

³¹ In the UK, only 5.7% of branded ethical are subject to SWS. 42% are manufacturer direct, 28% RWS and 24% DTP.

³² [redacted].

- (c) Only [10-20]% of branded pharmaceuticals in NI are on SWS and so viable for Sangers to compete for and these are in any case, subject to wider competition from all wholesalers. For SWS, short-line wholesalers act as a constraint, although only with next day delivery.
62. The Parties told the CMA that they would have no incentive to reduce quality or service standards as delivering twice daily to all pharmacies in NI is a key part of the offering for UK-wide Solus agreements, without which they could not compete for DTP or RWS contracts. They will also not reduce warehouse or delivery standards because they are regulated by the MHRA.

Third party views

63. A majority of the pharmacies that responded to the CMA's merger investigation expressed some concern in relation to the loss of Sangers, which is considered to be the closest competitor to AAH.
64. Some of the pharmacies told the CMA that short-line wholesalers, direct supply from manufacturers and parallel imports would also be viable options for the supply of branded ethical.
65. Third parties told the CMA that, pre-Merger, Sangers was perceived to have particular advantages in NI as a result of being established in NI and having an advantage of local knowledge and heritage. One third party also told the CMA that Sangers benefited in NI from being a Numark nominated wholesaler (see paragraph 31 above).
66. Pharmacies also told the CMA that entry by a broad-line wholesaler providing twice daily delivery would provide a viable competitor to the merged entity.

CMA assessment

67. The CMA notes the high shares of supply, if the Alliance Boots contract is included, and the concerns raised by third parties regarding the loss of Sangers. The CMA therefore considers that competition concerns may arise as a result of the Merger in this market. However, given that the Parties submitted (and some third parties indicated) that Alliance Boots intends to enter the market and would be a viable competitor to the Parties, the CMA has therefore considered whether entry by Alliance Boots into NI will be timely, likely and sufficient to prevent any SLC.

Likelihood of Entry and/or Expansion

68. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In

assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.³³

69. We have received evidence of possible entry and expansion from two wholesalers in direct response to the Merger:
 - (a) Phoenix told the CMA that it intends to expand its operations and share of supply in the wholesale of pharmaceuticals in NI; and
 - (b) Alliance Boots told the CMA that it intends to offer a broad-line wholesale service in NI.

70. Phoenix told the CMA that this expansion would not have been possible without the Merger and is for two main reasons:
 - (a) AAH is not perceived by customers as having the local advantages which Sangers had which leads to a greater opportunity to compete with the merged entity post-Merger; and
 - (b) AAH is not a Numark nominated wholesaler. Phoenix and Sangers are the only nominated wholesalers in NI. This means that members of the buying group will have to decide between continuing with a non-member of the Numark scheme (with the possible loss of associated financial benefits from participating in the buying group and local knowledge) or divert to Phoenix. Phoenix told the CMA that it has the ability and incentive to grow its market share where Sangers is no longer in the NI market.

71. The CMA notes that Phoenix, as a result of the contracts which it currently holds in NI, currently visits over half of NI pharmacies and, as such, has the infrastructure in place to allow it to expand its supply of pharmaceuticals in NI. While the scale of Phoenix's infrastructure may differ from that of AAH (eg. in relation to size of storage and quantity of stock held), the CMA notes that Phoenix would not need to make additional journeys to serve these pharmacies and limited (if any) switching costs would be incurred by these pharmacies.

72. The CMA has not considered Phoenix's plans for expansion in further detail as these are at an early stage; however, the CMA notes that it is realistic that the Parties will face an increasing competitive constraint from Phoenix post-

³³ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

Merger, even though it is not possible to assess the scale or timing of this development.

Timely

73. The Parties submitted that Alliance Boots had advanced plans to open its own distribution centre in NI by the end of Summer 2016.
74. Alliance Boots submitted documents and evidence to the CMA that showed that it had a business case to enter the market in NI and provide a broad-line, twice daily service to all pharmacies in NI by [REDACTED] 2016 at the latest:
- (a) On [REDACTED] 2015, an ‘investment requisition’ requesting approval for capital expenditure to open a service centre in NI was submitted to the [REDACTED] for approval. In this document, it is noted that [REDACTED].³⁴
 - (b) On [REDACTED] 2016, a ‘financial analysis’ was submitted to [REDACTED] setting out three different scenarios in relation to volumes, revenues, gross profit, etc.³⁵
 - (c) On [REDACTED] 2016, the investment requisition received formal approval “[REDACTED]”.³⁶
 - (d) In [REDACTED] 2016, a presentation was made to [REDACTED] with an update on the status/progress of Alliance Boots’ entry in NI; and
 - (e) By April 2016, Alliance Boots had served notice to terminate their relationship with Sangers and were in the process of leasing a warehouse in NI. A copy of the Heads of Terms Proposal between [REDACTED] and Alliance Boots was provided to the CMA showing the property to be leased, capital contribution, rent, etc.³⁷
75. On the basis of this evidence, the CMA considers that there is a realistic prospect that Alliance Boots will enter the market in August / September 2016.

Likely

76. In light of the evidence set out above which shows that Alliance Boots has advanced plans to enter and is currently progressing the lease of a warehouse and given that the contract with Sangers has already been terminated (Endnote 2), the CMA considers that there is a very high likelihood of the project going ahead. The CMA also notes that there is a substantial

³⁴ Document 464 Northern Ireland. Attachment 9 to email of 15 April 2016 from [REDACTED], Alliance Healthcare UK.

³⁵ Attachment 7 to email of 15 April 2016 from [REDACTED], Alliance Healthcare UK.

³⁶ Attachment 9 to email of 15 April 2016 from [REDACTED], Alliance Healthcare UK.

³⁷ Attachment 1 to email of 15 April 2016 from [REDACTED], Alliance Healthcare UK.

incentive for Alliance Boots to ensure that entry into NI proceeds so as to ensure that their UK operations are not impacted.

Sufficient

77. In this case, the CMA considers that a credible threat of Alliance Boots retaining and winning contracts as a broad-line wholesaler would be sufficient to act as a constraint on the merged entity. The CMA has therefore assessed the evidence in this respect.
78. The Parties submitted that Alliance Boots, as the largest national broad-line wholesaler will exert significant competitive pressure on the other wholesalers in NI. Its national coverage and significant number of Solus and semi-exclusive arrangements with manufacturers means it will represent a much more material competitive constraint on other broad-line wholesalers than Sangers did previously, including being able to compete for new contracts.
79. Alliance Boots told the CMA that it has developed a number of scenarios in relation to its ability to retain and win contracts in NI. Under its:
- (a) Worst case scenario: Alliance Boots will retain its sales under [REDACTED]. It envisages revenues of [REDACTED] per annum, with a gross profit of around [REDACTED]. This is considered the minimum outcome [REDACTED].
 - (b) Intermediate scenario: In addition to the sales under the worst case scenario, Alliance Boots will [REDACTED]. It envisages revenues of [REDACTED] per annum under this scenario with a gross profit of around [REDACTED].
 - (c) Business scenario: In addition to the sales under the worst case and intermediate scenarios, Alliance Boots will [REDACTED]. It envisages revenues of [REDACTED] per annum, with a gross profit of around [REDACTED].
80. Alliance Boots told the CMA that it has already started approaching potential new customers in NI and that it intends to compete for all broad-line wholesale supply of pharmaceuticals [REDACTED] to pharmacies, dispensing doctors and hospitals.
81. The CMA notes that Alliance Boots has won many contracts and has an established track record in the UK and considers that this demonstrates Alliance Boots's capability in relation to pharmaceutical wholesale. In addition, Alliance Boots has existing contractual relationships with manufacturers and the expertise and know-how in relation to pharmaceutical wholesale. Taken together, these factors indicate that it is likely to be able to continue winning contracts in the future.

82. Customers and competitors who responded to the CMA were generally not aware of the proposed entry by Alliance Boots; however, those that were aware indicated that they considered that Alliance Boots would be a viable competitor to the Parties. The majority of third parties also indicated that they would consider any broad-line entrant who could deliver twice daily as a viable competitor.
83. In light of the above evidence, the CMA considers that there is at least a realistic prospect of Alliance Boots continuing to service (ie. retaining) its Solus and Boots contracts post-Merger, as well as winning other pharmaceutical wholesale contracts and, as such, its entry would be sufficient to act as a constraint on the merged entity.

Conclusion on Entry and/or Expansion

84. For the reasons set out above, the CMA believes that entry of Alliance Boots into the wholesale of pharmaceuticals in NI would be timely, likely and sufficient in the context of the Merger.

Conclusion

85. The CMA has found that most branded ethicals are supplied under DTP and RWS, as part of exclusive or semi-exclusive arrangements and most of this is currently supplied by AAH and Sangers, the latter under a distribution contract with Alliance Boots which will be lost as a result of the Merger.
86. In reaching its conclusion, the CMA has taken into account the evidence it has received on the timeliness, likelihood and sufficiency of entry as set out above. In particular, the CMA notes that Alliance Boots' Solus contract and sales to Boots pharmacies make up a significant proportion of the supply of broad-line wholesale of branded ethicals to pharmacies/dispensing doctors in NI. The CMA also considers that there is a credible and increasing threat of Alliance Boots winning contracts for the broad-line wholesale of branded ethicals in NI. Given that third parties told the CMA that such entry by any broad-line wholesaler providing twice daily delivery would provide a viable competitor to the merged entity, the CMA believes that Alliance Boots can be expected to act as a constraint on the merged entity. For these reasons the CMA considers that entry by Alliance Boots will be sufficient to prevent a realistic prospect of an SLC in the broad-line wholesale of branded ethicals in NI.
87. In addition, the CMA considers that:

- (a) Sangers provides a limited constraint in NI for Solus and DTP contracts from manufacturers as it does not have a UK-wide presence (see further at paragraphs 120-124 below).
- (b) Sangers has only [X] contracts under RWS, worth around £[X]; and
- (c) Only [10-20]% of branded pharmaceuticals in NI are on SWS and these are in any case, subject to wider competition from all wholesalers including from Phoenix, Alliance Boots and short-line wholesalers.

88. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the broad-line wholesale of generic ethicals to pharmacies/dispensing doctors in NI.

ToH2 - Horizontal unilateral effects in the broad-line wholesale of generic ethicals to pharmacies/dispensing doctors in NI

Shares of supply

89. The Parties provided information on the shares of supply in the relevant frame of reference as shown in Table 2 below. The CMA notes that the shares of supply are high and raise *prima facie* competition concerns, but these exclude direct supplies from manufacturers and supplies from short-line wholesalers.

Name	2014		2015	
	Value (£)	Share	Value (£)	Share
AAH (excluding Trident)	[X]	[10-20]%	[X]	[10-20]%
Sangers	[X]	[60-70]%	[X]	[60-70]%
Combined AAH (excluding Trident) and Sangers	[X]	[80-90]%	[X]	[70-80]%
Alliance Boots (excluding OTC direct) distributed by Sangers	[X]	[5-10]%	[X]	[5-10]%
Phoenix	[X]	[10-20]%	[X]	[10-20]%
Total	[X]	100.0%	[X]	100.0%

Table 2: Parties' estimates of shares of supply by value for the broad-line wholesale of generic ethicals to pharmacies/dispensing doctors in NI

Parties' views

90. The Parties submitted that retail pharmacies run competitive tendering process and estimated that around [60-70]% of all NI pharmacies run mini-tenders or use "PriceGrid" or other software to assess the marketplace and

find the best prices.³⁸ They also told the CMA that short-line wholesalers are often able to buy in generic ethicals at better prices than broad-line wholesalers as they can procure drugs through parallel imports.³⁹ Due to the competitive tendering used by independent retail pharmacies in NI, broad-line wholesalers tend to price-match short-line wholesalers for generic ethicals and OTC medicines (which are sold on a SWS basis). This competitive dynamic, which is driven by short-line wholesalers, will not be affected by the Merger and the merged entity will continue to face strong price competition in relation to generic ethicals and OTC medicines.

Third party views

91. The third party views set out in paragraphs 63-66 in relation to branded ethicals under ToH1 apply to ToH2. In addition, the majority of pharmacies that responded to the CMA's merger investigation told the CMA that short-line wholesalers are a viable alternative to broad-line wholesalers for the supply of generic ethicals to pharmacies/dispensing doctors in NI.

CMA assessment

92. Based on the evidence from third parties, the CMA considers that short-line wholesalers act as a significant constraint on the Parties from outside the frame of reference. The relevant shares of supply taking into account short-line wholesalers and direct supply from manufacturers are shown in Table 3 below.

³⁸ Final Merger Notice, paragraph 132.

³⁹ The CMA understands that, while strictly speaking broad-line wholesalers could also procure supply through parallel imports, significant parallel imports by a broad-line wholesaler could complicate the relationship between broad-line wholesalers and manufacturers, which could in turn negatively affect their ability to win DTP or RWS arrangements.

Name	2014		2015	
	Value (£)	Share	Value (£)	Share
AAH (excluding Trident)	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
Sangers	[REDACTED]	[30-40]%	[REDACTED]	[30-40]%
Combined AAH (excluding Trident) and Sangers	[REDACTED]	[40-50]%	[REDACTED]	[40-50]%
Alliance Boots (excluding OTC direct) distributed by Sangers	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Phoenix	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
Trident	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
Other short-line wholesalers (including OTC direct)	[REDACTED]	[20-30]%	[REDACTED]	[30-40]%
Direct supply from manufacturers	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Total	[REDACTED]	100%	[REDACTED]	100%

Table 3: Parties' estimates of shares of supply by value for the wholesale of generic ethicals to pharmacies/dispensing doctors in NI

93. The CMA believes that generally there is more competition amongst manufacturers and wholesalers (including on price) in relation to generic ethicals, which are not subject to restricted contracts (ie. RWS or DTP), than in relation to branded ethicals. The CMA considers that, with a share of supply of [30-40]%, short-line wholesalers account for a significant proportion of the wholesale of generic ethicals to pharmacies/dispensing doctors in NI and impose a strong competitive constraint upon the Parties (from outside the frame of reference). Phoenix also imposes a constraint on the Parties with a [10-20]% share of broad-line wholesale supplies and [5-10]% overall, which would increase, if its expansion plans are successful.
94. However, the CMA considers that the Parties will still have a relatively high combined share of supply post-Merger and so could not rule out competition concerns. The CMA has therefore considered whether the entry of Alliance Boots would mitigate or prevent an SLC in this market.

Likelihood of entry and/or expansion

95. The CMA has set out its assessment of the entry of Alliance Boots in paragraphs 73-84 together with the potential expansion of Phoenix in paragraphs 70-72 and believes that entry by Alliance Boots would be timely, likely and sufficient. Alliance Boots intends to deliver sales under its non-solus and RWS agreements [REDACTED].

Conclusion

96. For the reasons set out above, the CMA believes that the entry by Alliance Boots will be timely, likely and sufficient to mitigate or prevent an SLC in the broad-line wholesale of generic ethicals to pharmacies/dispensing doctors in

NI. The CMA believes that post-Merger, Alliance Boots and Phoenix will provide a strong competitive constraint on the merged entity. The CMA therefore considers that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the broad-line wholesale of generic ethicals to pharmacies/dispensing doctors in NI.

ToH3 - Horizontal unilateral effects in the broad-line wholesale of branded ethicals to hospitals in NI

Shares of supply

97. The Parties provided information on the shares of supply in the relevant frame of reference as shown in Table 4 below. The CMA notes that the shares of supply are high and raise *prima facie* competition concerns, but these exclude direct supplies from manufacturers and supplies from short-line wholesalers.

Name	2014		2015	
	Value (£)	Share	Value (£)	Share
AAH (excluding Trident)	[REDACTED]	[30-40]%	[REDACTED]	[40-50]%
Sangers	[REDACTED]	[30-40]%	[REDACTED]	[10-20]%
Combined AAH (excluding Trident) and Sangers	[REDACTED]	[60-70]%	[REDACTED]	[60-70]%
Alliance Boots (excluding OTC direct) distributed by Sangers	[REDACTED]	[30-40]%	[REDACTED]	[30-40]%
Phoenix	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Total	[REDACTED]	100.0%	[REDACTED]	100.0%

Table 4: Parties' estimates of shares of supply by value for the broad-line wholesale of branded ethicals to hospitals in NI

Parties' views

98. The submissions set out in paragraphs 60-62 in relation to branded ethicals under ToH1 apply.

Third party views

99. The CMA was told that, in the event of a price increase, Phoenix and direct supply from manufacturers would be viable alternatives.

100. Two Hospital Trusts told the CMA that as hospitals have buffer (or reserve) stocks and storage, twice daily delivery may not be required and a manufacturer delivering within 24-48 hours would be sufficient. One third party told the CMA that, although hospitals in NI tend to favour wholesalers, some pharmaceuticals for hospitals are obtained via direct supply from manufacturers.

101. They also indicated that entry by a broad-line wholesaler providing twice daily delivery would provide a viable competitor to the merged entity, with one of these noting that it requires twice daily delivery. One Hospital Trust noted that that if Phoenix could increase its presence in NI, this would be sufficient to maintain competition.

CMA assessment

102. Based on the evidence from third parties, the CMA considers that direct supply from manufacturers is a realistic alternative for most hospitals seeking branded ethicals given the differences in their delivery needs compared to pharmacies and dispensing doctors. Most hospitals do not require twice daily delivery. The relevant shares of supply taking into account direct supply from manufacturers and short-line wholesalers are shown in Table 5 below.

Name	2014		2015	
	Value (£)	Share	Value (£)	Share
AAH (excluding Trident)	[X]	[5-10]%	[X]	[10-20]%
Sangers	[X]	[10-20]%	[X]	[0-5]%
Combined AAH (excluding Trident) and Sangers	[X]	[20-30]%	[X]	[10-20]%
Alliance Boots (excluding OTC direct) distributed by Sangers	[X]	[5-10]%	[X]	[10-20]%
Phoenix	[X]	[0-5]%	[X]	[0-5]%
Other short-line wholesalers (including OTC direct)	[X]	[20-30]%	[X]	[20-30]%
Direct supply from manufacturers	[X]	[40-50]%	[X]	[40-50]%
Total	[X]	100.0%	[X]	100.0%

Table 5: Parties' estimates of shares of supply by value for the wholesale of branded ethicals to hospitals in NI

103. The CMA considers that direct supply from manufacturers (with a share of supply of [40-50]%) and short-line wholesalers (with a share of supply of [20-30]%) account for the majority of the wholesale supply of branded ethicals to hospitals in NI and impose strong competitive constraints upon the Parties. Taking these constraints into account, the combined share of supply of the Parties is less than [20-30]% with an increment of less than [0-5]%.

Conclusion

104. For these reasons, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the broad-line wholesale of branded ethicals to hospitals in NI. Given this conclusion, the CMA has not found it necessary to consider the likelihood of entry and expansion in relation to this market.

ToH4 - Horizontal unilateral effects in the broad-line wholesale of generic ethicals to hospitals in NI

Shares of supply

105. The Parties provided information on the shares of supply in the relevant frame of reference as shown in Table 6 below. The CMA notes that the shares of supply are high and raise *prima facie* competition concerns, but these exclude direct supplies from manufacturers and supplies from short-line wholesalers.

Name	2014		2015	
	Value (£)	Share	Value (£)	Share
AAH (excluding Trident)	[X]	[80-90]%	[X]	[70-80]%
Sangers	[X]	[10-20]%	[X]	[20-30]%
Combined AAH (excluding Trident) and Sangers	[X]	[90-100]%	[X]	[90-100]%
Phoenix	[X]	[0-5]%	[X]	[0-5]%
Alliance Boots (excluding OTC direct distributed by Sangers)	[X]	[0-5]%	[X]	[0-5]%
Total	[X]	100.0%	[X]	100.0%

Table 6: Parties' estimates of shares of supply by value for the broad-line wholesale of generic ethicals to hospitals in NI

Parties' views

106. The submissions set out in paragraph 90 in relation to generic ethicals under ToH2 apply.

Third party views

107. The submissions set out in paragraph 91 in relation to generic ethicals under ToH2 and under paragraphs 99-101 in relation to hospitals under ToH3 apply.

CMA assessment

108. Based on the evidence from third parties, the CMA considers that hospitals do not require twice daily delivery (compared to pharmacies) and, as such, direct supply from manufacturers (with a share of supply of [10-20]%) and short-line wholesalers (with a share of supply of [50-60]%) impose strong competitive constraints upon the Parties.

109. Shares of supply taking into account direct supplies from manufacturers and short-line wholesalers are shown in Table 7 below. Table 7 shows that the Parties have a combined share of less than [30-40]% with a high proportion of sales coming from short-line wholesalers and direct supplies from manufacturers.

Name	2014		2015	
	Value (£)	Share	Value (£)	Share
AAH (excluding Trident)	[X]	[20-30]%	[X]	[20-30]%
Sangers	[X]	[5-10]%	[X]	[5-10]%
Combined AAH (excluding Trident) and Sangers	[X]	[30-40]%	[X]	[20-30]%
Phoenix	[X]	[0-5]%	[X]	[0-5]%
Alliance Boots (excluding OTC direct) distributed by Sangers	[X]	[0-5]%	[X]	[0-5]%
Other short-line wholesalers (including OTC direct)	[X]	[60-70]%	[X]	[50-60]%
Direct supply from manufacturers	[X]	[0-5]%	[X]	[10-20]%
Total	[X]	100.0%	[X]	100.0%

Table 7: Parties' estimates of shares of supply by value for the wholesale of generic ethicals to hospitals in NI

Conclusion

110. For the reasons given above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the broad-line wholesale of generic ethicals to hospitals in NI. Given this conclusion, the CMA has not found it necessary to consider the likelihood of entry and expansion in relation to this market.

ToH5 - Horizontal unilateral effects in the broad-line wholesale of over the counter (OTC) products in NI

Shares of supply

111. The Parties provided information on the shares of supply in the relevant frame of reference as shown in Table 8 below. The CMA notes that the shares of supply are high and raise *prima facie* competition concerns, but these exclude direct supplies from manufacturers and supplies from short-line wholesalers.

Name	2014		2015	
	Value (£)	Share	Value (£)	Share
AAH (excluding Trident)	[X]	[20-30]%	[X]	[20-30]%
Sangers	[X]	[60-70]%	[X]	[70-80]%
Combined AAH (excluding Trident) and Sangers	[X]	[90-100]%	[X]	[90-100]%
Alliance Boots (excluding OTC direct)	[X]	[5-10]%	[X]	[5-10]%
Total	[X]	100.0%	[X]	100.0%

Table 8: Parties' estimates of shares of supply by value for the broad-line wholesale of OTC products in NI

Parties' views

112. The Parties submitted that OTC medicines are primarily supplied to pharmacies, dispensing doctors and hospitals directly from manufacturers. In relation to those OTC medicines which are sold through wholesalers, they will generally be available on SWS. There are a very limited number of medicines included in RWS and DTP contracts which are classified as OTC.
113. The submissions set out in paragraph 90 in relation to generic ethicals under ToH2 apply, with the exception of the service requirement for a twice daily delivery which is not needed in relation to OTC medicines. Consequently, where OTC medicines are available on SWS, short-line wholesalers and other market participants impose an even greater competitive constraint on the Parties than under ToH2.

Third party views

114. No third party expressed any concerns in relation to the broad-line wholesale of OTC medicines in NI. The majority of pharmacies/pharmacy chains told the CMA that short-line wholesalers act as a constraint on the Parties and some indicated that they obtain direct supplies from manufacturers. Two pharmacies told the CMA that entry by a broad-line wholesaler providing twice daily delivery would provide a viable competitor to the merged entity (although one noted that twice daily delivery is not required).

CMA assessment

115. Based on the evidence from third parties, the CMA considers that short-line wholesalers act as a significant constraint on the Parties from outside the frame of reference. The relevant shares of supply taking into account short-line wholesalers and direct supply from manufacturers are shown in Table 9 below.

Name	2014		2015	
	Value (£)	Share	Value (£)	Share
AAH (excluding Trident)	[X]	[40-50]%	[X]	[40-50]%
Sangers	[X]	[10-20]%	[X]	[10-20]%
Combined AAH (excluding Trident) and Sangers	[X]	[50-60]%	[X]	[50-60]%
Phoenix	[X]	[10-20]%	[X]	[10-20]%
Trident	[X]	[0-5]%	[X]	[0-5]%
Alliance Boots (excluding OTC direct)	[X]	[5-10]%	[X]	[5-10]%
Other short-line wholesalers (including OTC direct)	[X]	[10-20]%	[X]	[10-20]%
Direct supply from manufacturers	[X]	[20-30]%	[X]	[20-30]%
Total	[X]	100.0%	[X]	100.0%

Table 9: Parties' estimates of shares of supply by value for the wholesale of OTC products in NI

116. The CMA considers that short-line wholesalers and direct supplies from manufacturers impose some competitive constraints upon the Parties. Phoenix and Alliance Boots also impose a constraint on the Parties with shares of supply of around [10-20]% and [5-10]% respectively. The CMA also notes that no third parties expressed any concerns.
117. However, the CMA considers that the Parties will still have a relatively high combined share of supply post-Merger and so could not rule out competition concerns. The CMA therefore considered whether the [X] would mitigate or prevent an SLC in this market.

Likelihood of entry and / or expansion

118. The CMA has set out its assessment of the plans of Alliance Boots in paragraphs 73-84 together with the potential expansion of Phoenix in paragraphs 70-72 and believes that as a result of these plans, Alliance Boots and Phoenix will provide a stronger competitive constraint on the merged entity in the future than is currently the case.

Conclusion

119. For these reasons, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the broad-line wholesale of OTC medicines in NI.

ToH6 - Horizontal unilateral effects in relation to manufacturer contracts for the broad-line wholesale of pharmaceuticals in NI

Shares of supply

120. The Parties told the CMA that AAH owns [X] contracts in NI valued at around £[X]. Alliance Boots owns [X] contracts in NI and Phoenix owns [X] contracts in NI valued at around £[X].
121. The Parties told the CMA that Sangers holds [X] RWS arrangements in NI⁴⁰ and AAH is also listed as a wholesaler on these contracts.⁴¹

Parties' views

122. The Parties submitted that manufacturer contracts are generally negotiated on a national (UK-wide) basis and, as NI represents a very small proportion (only around 3%) of the total value and volume in the UK, the Merger would have no impact on the competition for manufacturer contracts in NI.⁴²

Third party views

123. 10 out of 13 manufacturers that responded to the CMA's merger investigation did not express any concerns as regards competition for manufacturer contracts (indicating that manufacturers prefer to contract on a UK-wide basis). The three manufacturers that expressed concerns indicated that entry by a broad-line wholesaler providing twice daily delivery would provide a viable competitor to the merged entity.

CMA assessment

124. The CMA notes that:
- (a) only [X] contracts (out of over 100) were competed for in NI only and together with the views of third parties (in paragraph 123), this indicates that manufacturer contracts are generally negotiated on a national basis;
 - (b) Alliance Boots already holds a strong position in securing manufacturer contracts awarded for the UK (although it has used Sangers to fulfil the Northern Irish element of these contracts). This indicates that Alliance Boots will remain a strong constraint on the Parties post-Merger,

⁴⁰ [X].

⁴¹ Final Merger Notice, paragraph 107.

⁴² Final Merger Notice, paragraph 437.

considering its plans to be able to service its own contracts in NI (see paragraph 125 below); and

- (c) As noted in paragraph 71, Phoenix already has the network and serves a number of contracts in NI and has indicated that it hopes to expand as a result of the merger. This indicates that Phoenix represents a growing constraint on the Parties post-Merger.

Likelihood of entry and/or expansion

125. However, three manufacturers raised concerns regarding this market but indicated that entry by a broad-line wholesaler providing twice daily delivery would provide a viable competitor to the merged entity. The CMA has therefore considered its assessment of the entry of Alliance Boots in paragraphs 73-84 and the potential expansion of Phoenix in paragraphs 70-72 in relation to this market. The CMA believes that entry by Alliance Boots would be timely, likely and sufficient, noting that Alliance Boots will continue to service its Solus agreements with manufacturers and its presence in NI will enable it to compete for UK-wide agreements with a Northern Irish element.

Conclusion

126. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to manufacturer contracts for the broad-line wholesale of pharmaceuticals in NI.

ToH7 - Horizontal unilateral effects in relation to manufacturer contracts for the broad-line wholesale of pharmaceuticals in the UK

127. This ToH relates to the hypothetical possibility that Alliance Boots might not be able to adequately serve the Northern Irish aspects of the UK-wide contracts it holds with manufacturers. This, in turn, could damage Alliance Boots' reputation and cause it to be a weaker competitor against AAH for manufacturers' UK-wide contracts. Alliance Boots might have difficulties in serving these contracts in NI if (i) it did not plan to enter into NI, and needed to find another wholesaler to act as a 3PL on its behalf; or (ii) it did plan to enter, but faced significant transition difficulties in establishing an effective wholesale distribution network.

Shares of supply

128. The Parties told the CMA that AAH owns over [redacted] contracts in the UK valued at around £[redacted] and that Sangers is a very small regional player which owns

[X] contracts in the UK (all of which are solely in NI) valued at around £[X] (equivalent to less than a [0-5]% share of supply nationally). The Merger will therefore result in a limited increment to AAH's share of supply.

Parties' views

129. The Parties submitted that Sangers is not in a position to compete for national contracts. The three main competitors for manufacturer contracts in the UK are: AAH, Alliance Boots and Phoenix. The Merger has therefore resulted in a limited change (if any) from the pre-Merger situation.

Third party views

130. The vast majority of manufacturers (and third parties) did not express any concerns in relation to manufacturer contracts for the wholesale supply of pharmaceuticals for the reasons set out in paragraph 123.

CMA assessment

131. Whether the Merger gives rise to a realistic prospect of an SLC in relation to this ToH depends on Alliance Boots' ability to compete post-Merger, following the loss of Sangers as its distributor in NI. The CMA has considered the entry of Alliance Boots in paragraphs 73-84 and believes that entry by Alliance Boots would be timely, likely and sufficient and that there is a realistic prospect that Alliance Boots will continue to service its Solus contracts with manufacturers. The CMA considers that there is a substantial incentive for Alliance Boots to ensure that entry into NI is timely and sufficient so as to ensure that its UK operations are not impacted. Indeed, the importance of these UK-wide contracts to Alliance Boots provides it with a strong incentive to invest in an effective and robust distribution network in NI. The CMA also notes that none of the manufacturers raised any concerns in relation to this ToH.

Conclusion

132. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to broad-line wholesalers competing for manufacturer contracts in the UK.

ToH8 - Horizontal unilateral effects in the broad-line wholesale of vaccines in the UK

Shares of supply

133. The Parties provided information on relevant shares of supply as shown in Table 10 below. The CMA notes that the Parties' combined shares of supply for the wholesale supply of flu and travel vaccinations is around [20-30]% with an increment of around [5-10]%.

	Flu Vaccines	Travel Vaccines	Flu and Travel Vaccines
AAH	[5-10]%	[20-30]%	[10-20]%
MASTA	[5-10]%	[10-20]%	[5-10]%
Combined AAH and MASTA	[10-15]%	[30-40]%	[20-30]%
Direct supply from manufacturers		[50-60]%	
National Wholesalers (Alliance Boots/ Phoenix)		[10-20]%	
Regional Wholesalers		[0-5]%	
Short-line wholesalers		[0-5]%	
Total		100%	

Table 10: Parties' estimates of shares of supply for flu and travel vaccinations in the UK (2015)

Parties' views

134. The Parties submitted that the wholesale supply of travel and flu vaccinations does not constitute a distinct product market as all pharmaceutical wholesalers are capable of supplying (and do supply) travel and flu vaccines. They also noted that they would continue to face substantial competition from manufacturers supplying directly to pharmacies, dispensing doctors and hospitals, which account for at least 50% of the total supply of travel and flu vaccines to pharmacies, dispensing doctors and hospitals.

135. The Parties also told the CMA that MASTA's share of supply for the wholesale supply of travel vaccines will [redacted].⁴³ The Parties also submitted that MASTA does not have its own depot in the UK and subcontracts its wholesale logistics services (ie. storage and distribution) to Alloga (a 3PL company which is wholly-owned by Walgreens Boots Alliance).

⁴³ Final Merger Notice, paragraph 299.

Third party views

136. Only one third party (a competitor) expressed any concerns in relation to this ToH, indicating that the Merger results in the removal of a competitor from the supply of travel and flu vaccines. However, this competitor told the CMA that MASTA's main competitors in the supply of vaccines are manufacturers.

Conclusion

137. The CMA notes that the Parties share of supply is low at [20-30]% and decreasing due to the loss of exclusive supply rights, the increment in the combined share of supply due to the Merger is small ([5-10]%) and that direct supply from manufacturers accounts for half of wholesales of vaccines in the UK. In addition, MASTA currently subcontracts its wholesale logistics services which means that the material overlap (and potential loss of competition) as well as the competitive impact of the Merger is likely to be limited.
138. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the broad-line wholesale of vaccines in the UK.

Barriers to entry and expansion

139. The CMA has considered whether entry or expansion might prevent a SLC in its assessment of each ToH and set out the evidence it relied on in paragraphs 70-84.

Third party views

140. The CMA contacted manufacturers, customers (ie. pharmacies/dispensing doctors and hospitals) and competitors of the Parties.
141. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

142. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition within a market or markets in the United Kingdom.
143. The Merger will therefore **not be referred** under section 22(1) of the Act.

Stephanie Canet
Director, Mergers Unit
Competition and Markets Authority
29 June 2016

Endnote

1. Celesio currently operates 20 pharmacies and Sainsbury's currently operates only one pharmacy in NI, which Celesio intends to acquire.
2. In relation to paragraphs 74, 75 and 76, Alliance Boots notes that notice to terminate the contract was given on 31 March 2016 and that the contract will be terminated anytime between 4 July and 4 September 2016.