

Anticipated acquisition by McKesson Corporation of Bupa Home Healthcare Limited and Bupa Home Healthcare Group Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6758/15

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 28 June 2016. Full text of the decision published on 17 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.

SUMMARY

1. McKesson Corporation (**McKesson**) has agreed to acquire Bupa Home Healthcare Limited and Bupa Home Healthcare Group Limited (**Bupa**) from Bupa Group (the **Merger**). McKesson and Bupa 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 will cease to be distinct as a result of the Merger, that the turnover test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. McKesson, through its UK trading entity, Evolution Homecare (**Evolution**) and Bupa overlap in the supply of low-tech clinical home care services. Bupa also supplies high-tech clinical home care services. The CMA assessed the impact of the Merger, in line with previous decisional practice, in a product frame of reference for the supply of low-tech clinical homecare services. The CMA also assessed the Merger in the supply of high-tech clinical homecare services, given McKesson's presence in the neighbouring low-tech segment and the

possibility of its entry into the high-tech segment. In both frames of reference, the relevant geographic scope is the United Kingdom.

4. In relation to the supply of low-tech clinical homecare services, the CMA investigated whether the Merger would result in horizontal unilateral effects arising from the reduction in the number of providers. The CMA found that the merged entity would have a modest share of supply (by patient volumes) of low-tech clinical homecare services of approximately [20-30]%, with an increment of c. [10-20]%.
5. The CMA found that, while the Parties compete in the low-tech segment, they are not particularly close competitors. Bupa has a strategic focus on the high-tech segment and tender data shows that the Parties have not bid against each other in many tenders for low-tech clinical homecare services and that other providers may be closer competitors to Evolution in that segment.
6. Post-merger, sufficient constraints will remain from other providers of low-tech clinical homecare services (namely Healthcare at Home, the market leader with a share of supply of c. [X]%; Alcura, with c. [10-25]%; and Polar Speed, with c. [X]%, in each case by patient volumes). Additionally, there is a tail of smaller providers that have entered the clinical homecare market in the last 2-3 years and have demonstrated their ability to win contracts from established incumbents. This is in the context of the market leader's share of supply [X] in the past four years. Accordingly, the CMA believes that the merged entity will continue to face effective competition and that the Merger does not give rise to competition concerns in the low-tech segment.
7. In relation to the supply of high-tech clinical homecare services, the CMA investigated whether the Merger would result in horizontal unilateral effects as a result of the loss of actual potential or perceived potential competition. The CMA obtained evidence which showed that, absent the Merger, McKesson was [X]. Accordingly, the Merger does not give rise to competition concerns in the high-tech segment.
8. The CMA also investigated whether harm to competition in the supply of low-tech and high-tech clinical homecare services could arise as a result of vertical effects. AAH pharmaceuticals, a member of the McKesson group of companies, supplies some of the drugs required by some clinical homecare service providers to fulfil patient orders under clinical homecare contracts. However, the CMA found that AAH Pharmaceuticals would not be able to foreclose clinical homecare service providers with respect to these contracts.
9. The CMA therefore believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in the supply of low-

tech or high-tech clinical homecare services as a result of horizontal unilateral effects or vertical effects.

10. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

11. McKesson is a US-based company active in the distribution and delivery of drugs and equipment, health and beauty care products and clinical solutions to healthcare organisations. McKesson is active in the provision of clinical homecare services in the UK through Evolution. The turnover of McKesson in its previous financial year (1 April 2014 to 31 March 2015) was approximately £111 billion worldwide, £[~~XX~~] of which was generated in the European Economic Area and £[~~XX~~] in the UK.
12. Bupa Group plc is a global healthcare company offering healthcare-related services, including health insurance, and operates care homes, dental clinics diagnostic and wellness centres, primary care facilities retirement villages, hospitals and in the UK. Bupa Group plc provides clinical homecare services in the UK through the target businesses, Bupa. The turnover of Bupa in the 2015 financial year end was approximately £[~~XX~~], all of which was generated from activities in the UK.¹

Transaction

13. The transaction involves the proposed acquisition by Lloyds Pharmacy Limited (an entity within McKesson) of the entire share capital of Bupa for a purchase price of approximately £[~~XX~~] in cash and pursuant to a sale and purchase agreement (SPA), which was entered into on 1 February 2016.²

Jurisdiction

14. The Merger met the thresholds under the EU Merger Regulation (**EUMR**) and was therefore notified to the European Commission. However, the Parties made a reasoned submission under Article 4(4) of the EUMR to the European Commission, requesting referral to the CMA, on 1 April 2016.

¹ For completeness, Bupa derives £[~~XX~~] of revenues from a very limited number of patients located in Greece, Jersey, Malta and New Zealand. [~~XX~~]

² Under the terms of the SPA, completion is conditional, inter alia, upon the receipt of approval from the CMA following an Article 4(4) referral decision by the European Commission.

15. The CMA considered that the Merger may significantly affect competition in a market or markets within the UK, each of which presents all the characteristics of a distinct market. The Merger qualified for review in the UK under the Enterprise Act 2002 since the turnover of Bupa exceeded £70 million and so the turnover test in section 23(1)(b) of the Act is satisfied. The Merger would also result in the enterprises of McKesson and Bupa ceasing to be distinct. Arrangements were therefore in progress or in contemplation which, if carried into effect, would result in the creation of a relevant merger situation.
16. Accordingly, the CMA accepted the Parties' Article 4(4) reference request on 28 April 2016. The preliminary assessment period of the Merger under section 34A(4) of the Act started on 28 April 2016 and the statutory 45 working day deadline for a decision is 6 July 2016.

Counterfactual

17. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing 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.³
18. In this case, there is no evidence supporting a different counterfactual, and neither the Parties nor third parties have put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Background

19. Clinical homecare services include the compounding, dispensing and delivering of medication to patients' homes with or without associated nursing services, and are defined by the Royal Pharmaceutical Society (**RPS**) in its handbook as *"a service that delivers ongoing medical supplies and, where necessary, associated care, initiated by a hospital prescriber, direct to the*

³ *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).

patient's home with their consent. The purpose of the homecare medicines service is to improve patient care and choice of their clinical treatment".⁴

20. The Parties both supply clinical homecare services to patients receiving care through the NHS.⁵ These services are commissioned either by:
 - (a) the pharmaceutical company (**PharmaCo**),⁶ which commissions the clinical homecare service and then charges the NHS a single combined price for the drug that PharmaCo manufactures and the clinical homecare service provided;⁷ or
 - (b) directly by the NHS, which commissions the clinical homecare service from one or more providers and separately sources the necessary drugs from a PharmaCo.⁸
21. A single clinical homecare provider may be chosen under an exclusive contract or multiple providers may be appointed to a framework agreement. In the latter case, the relevant NHS institution, whether a clinical commissioning group (**CCG**) or more usually the NHS Trust, can then choose which provider to use for a given patient or patient group.
22. These services range from a relatively straightforward logistics service (e.g. monthly delivery of packaged tablets dispensed by an in-house pharmacy) to more complex services (e.g. involving, in addition to dispensing and delivery, the compounding of different drugs, intravenous injection by a nurse and arrangements for clinical waste disposal).

Frame of reference

23. 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

⁴ [Royal Pharmaceutical Society's Handbook for Homecare Service in England](#).

⁵ The Parties confirmed that they supplied a very small number of services to private patients (Bupa, [X]) and Evolution, [X]). Given this negligible overlap and the very small numbers of private patients that both Parties treated, we did not consider this patient group further. For completeness, we note that, in [Completed acquisition by Bupa Finance plc of Clinovia Group Limited \(Bupa/Clinovia\)](#), the OFT concluded that there were no defining characteristics which distinguished the nature of clinical homecare services provided to NHS and private patients.

⁶ The Parties estimate that in about 70% of cases it is the PharmaCo that pays for the clinical homecare service.

⁷ The price of branded prescription medicines supplied to NHS patients through a clinical homecare provider is controlled by the Department of Health under the Pharmaceutical Price Regulation Scheme (**PPRS**). However, the PPRS does not regulate the price paid by the NHS for the distribution of the drugs by clinical homecare providers.

⁸ The actual NHS organisation varies and includes NHS England, NHS Scotland, the Commercial Medicines Unit and in some cases a central procurement hub that commissions on behalf of a number of individual NHS trusts.

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 will take these factors into account in its competitive assessment.⁹

24. The Parties overlap in the supply of low-tech clinical homecare services. Bupa also supplies high-tech clinical homecare services. Given McKesson's presence in the neighbouring low-tech segment and the possibility of its entry into the high-tech segment, the CMA has considered the scope of the frames of reference in relation to both the low-tech and high-tech segments.

Product scope

25. The Office of Fair Trading (**OFT**) (one of the CMA's predecessor organisations) previously distinguished between low-tech and high-tech clinical homecare services in *Bupa/Clinovia*.¹⁰
26. The Parties submitted that there is an accepted industry-wide distinction between "high-tech" and "low-tech" clinical homecare services, based on the complexity of the relevant service requirements:
- **High-Tech services** involving the dispensing and delivery of compounded drugs to patients at home and/or ongoing nurse support typically to administer intravenous drugs in the patient's home; and
 - **Low-Tech services** involving the dispensing and delivery of drugs to patients' homes with, in a small number of cases, ancillary nurse support on the first visit to teach self-administration.¹¹
27. All third parties the CMA spoke to recognised and agreed with this distinction, referring to the RPS handbook and providing separate lists of suppliers for low-tech and high-tech clinical homecare services which demonstrate that few suppliers provide both types of services. They also referred to the need for compounding (ie the mixing of multiple drugs prior to prescription) and ongoing nurse support as defining characteristics of 'high-tech' clinical homecare services. Further, whilst NHS customers generally either commission by drug/therapy (expressly categorising their service requirements as either 'low-tech' or 'high-tech' clinical homecare services), or

⁹ [Merger Assessment Guidelines](#), paragraph 5.2.2.

¹⁰ Where the OFT noted at paragraph 13 that "*Homecare can be further sub-divided into low-tech or high-tech, with the latter typically including intravenous therapy, other injectable therapy and oral therapy that require significant support.*"

¹¹ Whilst Bupa supplies what may be described as high-tech clinical homecare services and low-tech clinical homecare services, Evolution supplies only low-tech services.

tender for all low-tech services under one framework, none awards contracts for high-tech and low-tech clinical homecare services together.

28. The CMA also investigated whether further segmentation within low-tech clinical homecare services could be appropriate, including by:
- (a) customer group (ie NHS or PharmaCo);
 - (b) specific drugs/therapies (including those requiring specialist nurse support); or
 - (c) services which fall between low-tech and high-tech clinical homecare services, which are referred to as 'mid-tech'.
29. First, in relation to customer groups, the CMA observed that PharmaCos are more likely to select a single clinical homecare provider whilst NHS customers are more likely to use a framework agreement. The duration of PharmaCo contracts was also more varied. However, PharmaCos mostly award contracts via tenders, as do NHS customers, and the technical requirements of tenders are equivalent across NHS and PharmaCo contracts.¹² Further, both sets of customers identified the same suppliers as being capable of providing low-tech clinical homecare services and no competitors said that they would not compete to win contracts with both sets of customers. In conclusion, the CMA does not consider it appropriate to segment the frame of reference by customer group.
30. Second, in relation to specific drugs/therapies, third parties told the CMA that the specific type of drug has no impact on the list of potential providers. Some NHS customers tender for all low-tech clinical homecare services, rather than specific therapies. Further, customers who tender by therapy told the CMA that they invite the same clinical homecare providers to tender providing it is for low-tech clinical homecare services. All competitors who provide low-tech clinical homecare said that they are capable of providing services for all therapies. Additionally, all competitors have patients in at least two different therapy areas.¹³
31. Finally, some internal documents of the Parties and the RPS Handbook also refer to a possible mid-tech clinical homecare services segment, which usually involves cold-chain delivery and/or an initial visit by a nurse.¹⁴ One

¹² This is an overall observation from all customer responses to questionnaires.

¹³ In this regard, the CMA was also told that, whilst some drugs required different storage requirements (e.g. cold-chain and ambient temperature), this is not a meaningful distinction as most providers use vans with dual-chambers.

¹⁴ Submissions from customers.

PharmaCo and most NHS customers recognise a market for mid-tech. However, some customers that recognise the concept of 'mid-tech' see it as a subset of low-tech and do not tender for those services separately from low-tech.¹⁵ Those customers that tender separately for 'mid-tech' services said that they invited the same providers to tender for those services as they would for low-tech services.

32. In light of the above, the CMA did not find evidence to warrant further segmentation. The CMA therefore considers that the appropriate product frames of reference for assessing the Merger are:

(a) Low-tech (including mid-tech) clinical homecare services; and

(b) High-tech clinical homecare services.

Geographic scope

33. The Parties submitted that the geographic frame of reference is the UK, given that all competitors have a national capability, most contracts are national (so that there is a single price point from each bidder) and the Parties do not vary pricing regionally. The Parties submitted that [REDACTED].¹⁶

34. The CMA investigated whether the competitive dynamics in the supply of clinical homecare services vary at a regional or local level within the United Kingdom.

35. All PharmaCos said that they tender for contracts on a national basis and all potential suppliers are able to offer a national service. While many NHS clinical homecare contracts are regional in nature, overall these account for a minority of all clinical homecare contracts and patients. More importantly, these customers do not consider geographic location of suppliers to be an important factor in their selection.¹⁷ NHS regional customers told the CMA that they believe all their potential suppliers are national. Nearly all competitors the CMA spoke to said that they operate nationally and are capable of supplying anywhere in the UK.¹⁸

36. Based on the above evidence, the CMA considers that the appropriate geographic frame of reference for the assessment of the Merger is the UK.

¹⁵ Customer responses to questionnaires.

¹⁶ The exception was the Highlands and Islands of Scotland due to delivery costs.

¹⁷ Customer responses to questionnaires.

¹⁸ One competitor told us that it was not currently able to supply Northern Ireland.

Conclusion on the frame of reference

37. In light of the above, the CMA has considered the competitive effects of the Merger in the following frames of reference:
- (a) low-tech (including mid-tech) clinical homecare services in the UK; and
 - (b) high-tech clinical homecare services in the UK.

Competitive assessment

38. In its assessment the CMA has considered the following three theories of harm:
- (a) horizontal unilateral effects through the loss of actual competition in the supply of low-tech clinical homecare services;
 - (b) horizontal unilateral effects through the loss of actual potential or perceived potential competition in the supply of high-tech clinical homecare services; and
 - (c) vertical effects through input foreclosure.

Horizontal unilateral effects in the low-tech segment

39. The CMA has examined whether the merged entity could unilaterally raise wholesale prices above the pre-Merger level or deteriorate its competitive offering to retailers and pharmacies, in relation to the supply of low-tech clinical homecare services in the UK.
40. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA has considered:
- (a) shares of supply;
 - (b) the closeness of competition between the Parties; and
 - (c) competitive constraints from other suppliers.

Shares of supply

41. The Parties provided estimates of their shares of supply by both number of patients and revenue, based on information collated by the National Clinical Homecare Association. These are set out in Table 1 below.

Table 1: Parties' estimates of shares of supply for low-tech clinical homecare services in 2015 by both number of patients and value¹⁹

Supplier	Number of patients	% of all patients	Estimated revenue	% of all revenue
Evolution	[X]	[10-20]%	[X]	[5-10]%
Bupa	[X]	[10-20]%	[X]	[10-20]%
Combined	[X]	[20-30]%	[X]	[20-30]%
Healthcare at Home	[X]	[X]%	[X]	[X]%
Alcura	[X]	[c. 10-25]%	[X]	[c. 10-25]%
Polar Speed	[X]	[X]%	[X]	[X]%
Biodose	[X]	[0-5]%	[X]	[0-5]%
Pharmaxo	[X]	[0-5]%	[X]	[0-5]%
Total	[X]	100%	[X]	100%

42. Based on patient volumes, Evolution had a pre-Merger share of supply of [10-20]% and Bupa had share of [10-20]% (giving a combined share of [20-30]%) in 2015. This compares to Healthcare at Home, which had a share of supply of [X]%, Alcura with [c. 10-25]% and Polar Speed with [X]%. Biodose and Pharmaxo are smaller players with shares of c. [0-5]% each. Further, Fresenius has some patients and HealthNet has recently entered the market, but neither are included in the Parties' estimates.
43. While shares of supply can generally be informative regarding the relative strength of various suppliers in a market, shares in bidding markets can change substantially as contracts change hands through tenders, particularly if there are relatively few large contracts.
44. The Parties submitted that shares of supply are not a reliable measure of market power given that their key customers typically award business through competitive tenders and so historical wins may not reflect a supplier's ability to win further contracts. Polar Speed and, in particular, Biodose and Pharmaxo, are comparatively recent entrants in respect of clinical homecare services,

¹⁹ There are significant limitations to the revenue calculations, given that the Parties did not have access to rivals' service revenues and estimated value shares on the basis of all revenues (i.e. including not only service revenues but also the drug cost at pass-through price). Further, the vast majority of revenue is associated with the pass through cost of the relevant drug (which accounts for over 90% of revenue), and so two firms offering an identical service may have very different value shares simply due to distributing different drugs. This may therefore understate or overstate the competitive position of any one supplier in a market where customers told us that the actual drug has no bearing on a supplier's competitive positioning. Volume of deliveries would also provide a better measure, although this information was unavailable. However no customers told the CMA that they were concerned about a competitor's ability to "scale up" the number of deliveries. The CMA therefore considered share of supply *by patients* to be a more objective indicative measure of a parties' presence in this market and therefore used this as the starting point in the assessment.

and therefore share of supply data was likely to understate the competitive constraint exercised by these players in the bidding process.

45. The CMA notes that PharmaCo tenders are typically renewed on a two to three year cycle and so only a portion of the market can be contested by a new entrant at any given point in time. Further, once awarded a place on a PharmaCo or NHS framework, it will take a new entrant time to develop patient volume.²⁰ Shares of supply may therefore understate the market position of new entrants. Nevertheless, the CMA notes that the largest competitor, Healthcare at Home, has been steadily losing share of supply over the past four years.

Closeness of competition between the Parties

46. Where products or services are differentiated, for example by branding or quality, unilateral effects are more likely where the merger firms' offerings compete closely.²¹ Accordingly, the CMA analysed the extent to which the Parties currently compete against each other. The Parties submitted that they are not close competitors in the low-tech segment, pointing to Bupa's focus on the high-tech segment (and McKesson's focus on the low-tech segment) and tender data to support their submission.
47. The CMA sought the views of the Parties' customers on the extent to which the Parties closely compete. Whilst some considered the Parties to be alternative providers none believed them to be close competitors. In particular:
- (a) many customers noted that Bupa focussed on high-tech clinical homecare services;
 - (b) some customers noted that Bupa did not bid in contracts where Evolution bid;²² and
 - (c) one customer noted that Bupa [✂], which was confirmed by pricing information from two other customers.
48. The internal documents of the Parties did not identify one another as close competitors, instead referring to the other as one of a number of competitors. In several of Bupa's internal documents, Evolution is mentioned as a low-tech

²⁰ In this regard, some customers are concerned to minimise any disruption a change a supplier would have on their patients. However, it was generally agreed that this was more of an issue for the high-tech segment than for low-tech.

²¹ [Merger Assessment Guidelines](#), paragraph 5.4.6.

²² Responses to questionnaires.

competitor.²³ Bupa is not mentioned as frequently by Evolution, but is noted as a competitor in two internal documents.

49. The Parties submitted tender data for the past five years, which they submit shows that they do not frequently bid for the same tenders nor frequently win the same tenders (it is possible for more than one bidder to be appointed to the same contract or framework agreement). The CMA analysed the tender data and found that Bupa only bid in [X] (or [20-30]%) of the [X] bids made by Evolution for low-tech clinical homecare services²⁴ between 2010 and 2015. By comparison, Healthcare at Home bid in the vast majority of cases, Alcira in [X]% and Polar Speed in [X]%.²⁵ Further, there were [X].
50. The CMA notes that the Parties did not often win places on the same framework agreements:
 - (a) there were [X] tenders in which Evolution won and there was at least one other winner (ie Evolution was one of two or more providers appointed to a framework agreement). Bupa was appointed in [X] of these ([10-20]%), whereas Alcira and Healthcare at Home were both appointed in [X] ([X]%) and Polar Speed in [X] ([X]%)²⁶ and
 - (b) there were [X] tenders in which Bupa won and there was at least one other winner. Evolution was appointed in [X] of these cases ([20-30]%), whereas Healthcare at Home was appointed in [X] ([50-60]%) and Alcira in [X] ([X]%).
51. The tender data suggests that Healthcare at Home and Alcira may have been closer competitors to each of the Parties than the Parties were to each other. Further, it suggests that there is little that sets the Parties apart from other competitors, given that there were [X].
52. In summary, the CMA believes that whilst Evolution and Bupa have competed for some low-tech clinical homecare contracts, they are not particularly close competitors. As set out further below, both Healthcare at Home and Alcira appear to be closer competitors than Bupa to Evolution.

²³ Including strategy updates, presentations on Immunoglobulin Replacement Therapy, management presentations and a strategy paper.

²⁴ This represents all Evolution's bids, since it is not active in, nor has bid for, high-tech clinical homecare services.

²⁵ The Parties were unable to conduct an equivalent analysis for Bupa because they were unable to provide information on which clinical homecare providers also bid when Bupa bid for a sufficient number of projects.

²⁶ The findings of the CMA's analysis differs slightly from the economic analysis undertaken by the Parties' advisers as the CMA considered all tenders that Evolution won *where there was another winner* as a more relevant measure than simply all tenders where Evolution won.

Competitive constraints from other suppliers

53. Unilateral effects are more likely where customers have little choice of alternative supplier. The CMA has therefore considered whether there are alternative suppliers which would provide a competitive constraint on the merged entity.
54. The CMA identified seven other competitors to the Parties in the supply of low-tech clinical homecare services. The largest are Healthcare at Home, Alcura and Polar Speed. Biodose and Pharmaxo have a smaller presence whilst Fresenius and Healthnet have some patients but are relatively new entrants. The largest five competitors are discussed below.

Healthcare at Home

55. The CMA believes that Healthcare at Home competes closely with Evolution and Bupa and would continue to compete closely with the merged entity.
56. Healthcare at Home is by far the largest provider of low-tech clinical homecare services in the UK, and would remain so post-Merger. It told the CMA that it is capable of providing clinical homecare services for all therapies across the UK and provides services to virtually all NHS organisations, pharmaceutical companies and across all low-tech therapy areas.²⁷
57. All customers and competitors considered that Healthcare at Home competes closely with Evolution and Bupa.²⁸ The vast majority of customers that the CMA contacted said that they use Healthcare at Home for some clinical homecare services and would consider Healthcare at Home in future tenders.²⁹ Further, a number of internal documents from both Bupa and Evolution noted Healthcare at Home as a competitor.
58. Tender data showed that Healthcare at Home bid in [90-100]% of contracts in which Evolution bid, and when Evolution was appointed to a multi-provider framework, Healthcare at Home was also appointed in [90-100]% of tenders. When Bupa was appointed to a multi-provider framework Healthcare at Home was also appointed in [50-60]% of tenders.

²⁷ This applies to both low-tech and high-tech segments.

²⁸ Questionnaire responses.

²⁹ Questionnaire responses. A number of competitors and customers noted that Healthcare at Home's share of supply had fallen significantly from 80% a few years ago, but still considered them the largest player in the market by some margin.

Alcura

59. The CMA believes that Alcura competes closely with Evolution, and to a large extent Bupa, and will continue to compete closely with the merged entity.
60. Like Evolution, Alcura focuses on the low-tech segment and is active across a broad range of therapeutic areas. Alcura also has click and collect capability through its retail partner Boots. Alcura told the CMA that [REDACTED].
61. The majority of customers said that they will consider Alcura in future tenders. All customers and competitors considered that Alcura competes closely with Evolution, as did Alcura itself.³⁰ While both customers and competitors considered that Alcura competes with Bupa, some noted that Bupa's focus was on high-tech clinical homecare unlike Alcura.
62. Further, a number of internal documents from both Bupa and Evolution noted Alcura as a competitor. Bupa's documents focused on Alcura's links with Boots pharmacies, which it saw as giving Alcura a competitive advantage, whilst Evolution's documents noted the similarities of its product offering with that of Alcura's.
63. Tender data shows that Alcura bid in [REDACTED]% of contracts in which Evolution bid, and when Evolution was appointed to a multi-provider framework, Alcura was also appointed in the vast majority of tenders. When Bupa was appointed to a multi-provider framework Alcura was also appointed in [REDACTED]% of tenders.

Polar Speed

64. The CMA believes that Polar Speed currently competes with the Parties and, whilst it is less of a constraint on them than Healthcare at Home or Alcura, it [REDACTED].
65. Polar Speed is owned by the logistics company UPS. It told the CMA that [REDACTED]. Polar Speed said that [REDACTED].
66. An Evolution internal document, discussing whether to bid for a framework to deliver clinical homecare services to patients across London NHS Trusts for a number of therapies, refers to strong competition from Polar Speed. Further, the tender data supplied by the Parties shows that Polar Speed bid in [REDACTED] of

³⁰ One competitor submitted that all low-tech providers compete with Evolution but that Alcura and Evolution had special strength in relation to NHS contracts.

the [REDACTED] contracts ([REDACTED]%) in which Evolution bid between 2010 and 2015. Of [REDACTED] tenders won by Evolution, Polar Speed also won in [REDACTED] ([REDACTED]%).³¹

67. In general customers had positive views on Polar Speed, citing its services as “very good” and envisaging using more of their services in the near future.³²

Other competitors: Biodose and Pharmaxo

68. The CMA identified a number of other competitors to the Parties. These included Biodose and Pharmaxo. Both told the CMA that [REDACTED]. Some customers also noted them as potential bidders.
69. Biodose has very recently been awarded low-tech contracts with three NHS customers and two PharmaCos. As most of these contracts have only just started Biodose does not currently have many patients.³³ Biodose said that it is growing rapidly and pointed to recent strong revenue growth.
70. Whilst the CMA found little evidence that Pharmaxo had won low-tech contracts, its established presence in the high-tech segment may enable it to grow its share in the low-tech segment and some customers expressed a willingness to add it to their frameworks.
71. The CMA considers that the constraint posed by each of these suppliers individually is currently weak although potentially growing. Biodose’s entry and ambitions may indicate that the structure of the market is capable of changing in time.³⁴

Conclusion on competitive constraints

72. As set out above, the CMA believes that Healthcare at Home and Alcura compete closely with the Parties, while Polar Speed also exerts a significant [REDACTED] constraint. The constraint from other suppliers such as Pharmaxo and Biodose is small, although [REDACTED].
73. Accordingly, the CMA considers that the merged entity will continue to face effective competition.

³¹ Recent examples of tenders Polar Speed has won include [REDACTED].

³² Customer responses to questionnaires. Most PharmaCos that responded to us had some experience of Polar Speed even if they did not use them for PharmaCo funded clinical homecare, because they would be supplying drugs as part of an NHS-funded clinical homecare scheme.

³³ Biodose forecast that it will have about [REDACTED] patients by the end of 2016 (which would give it a share of supply of approximately [0-5]%).

³⁴ This is true, to a lesser extent, for Fresenius and Healthnet, which were mentioned as potential suppliers by some customers.

Conclusion on horizontal unilateral effects

74. For the reasons set out above, the CMA believes that, while the Parties competed pre-Merger, they were not particularly close competitors and the merged entity will continue to be effectively constrained by a number of other suppliers. Accordingly, 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 supply of low-tech clinical homecare services.

Horizontal unilateral effects in the high-tech segment

75. As set out above, the Parties do not currently overlap in the supply of high-tech clinical homecare services. Notwithstanding this, the CMA investigated whether, in the absence of the proposed Merger:
- (a) Evolution was likely to have shortly commenced providing high-tech clinical homecare in competition with Bupa and, in that scenario, whether the Merger may have resulted in a loss of that competition (actual potential competition);³⁵ or
 - (b) even if Evolution was not likely to have entered high-tech clinical homecare, Bupa had still been concerned about its potential entry to the extent that this was acting as a constraint on Bupa's bidding in the high-tech segment, which would be lost as a result of the Merger (perceived potential competition).
76. First, in relation to actual potential competition, the CMA has found that [X]. However, internal documents from Evolution show [X]. The CMA did not find any evidence that suggested that Evolution [X].
77. Second, in relation to perceived potential competition, the evidence obtained by the CMA (including from internal documents, customers and competitors) did not indicate that Bupa was concerned about, or disciplined by, the threat of entry of Evolution into the high-tech segment when bidding for contracts.
78. In light of the above, the CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of a loss of actual or perceived potential competition in the supply of high-tech clinical homecare services.

³⁵ This could also be assessed by adjusting the counterfactual, where evidence of entry was identified and entry was deemed likely to occur.

Vertical effects through input foreclosure

79. Evolution's parent company, Celesio, has a drug wholesaling business, AAH Pharmaceuticals, which supplies some drugs to Evolution, Bupa and other providers of clinical homecare services that they require to supply homecare services.
80. In light of this vertical relationship, the CMA investigated whether the merged entity (through AAH) might stop supplying drugs to other clinical homecare providers, or raise the prices of those drugs, to the extent that they would be unable to compete with the merged entity in the supply of low-tech or high-tech clinical homecare services (ie input foreclosure).
81. The Parties submitted that the merged entity would have no ability or incentive to foreclose, given that clinical homecare service providers purchase very little of their drugs from wholesalers such as AAH. For instance, Bupa purchases only approximately [5-10]% of its pharmaceuticals from wholesalers and Evolution approximately [5-10]%. AAH's share of supply of pharmaceutical wholesaling in the UK is estimated at approximately [20-30]% by value, which indicates that clinical homecare providers have alternative suppliers. The Parties note that AAH presently only accounts for approximately [0-5]% of Bupa's expenditure on pharmaceuticals.³⁶
82. The CMA also considered whether AAH might be a vital supplier for a particular drug that was needed in the supply of clinical homecare services. AAH sales data indicate that there have been no cases in which both Evolution and Bupa were buying the same drug from AAH *and* AAH was the sole supplier of that drug (or had a very large share of supply among wholesalers). As such the CMA does not consider that the incentives to foreclose will change for any particular drug following the Merger.
83. Based on the limited purchases of drugs by clinical homecare providers from AAH, the absence of any increase in incentive from the Merger, and the availability of other options for clinical homecare providers, the CMA did not find any competition concerns in the supply of low-tech clinical homecare services as a result of input foreclosure.
84. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects on any market or market(s).

³⁶ Further, we note that AAH is already vertically integrated with Evolution and only accounts for approximately [0-5]% of Evolution's expenditure on pharmaceuticals.

Barriers to entry and expansion

85. 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.³⁷
86. In this case, the CMA has not had to conclude on the extent of any barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

87. The CMA contacted customers and competitors of the Parties. Very few customers raised any concerns regarding the Merger.
88. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

89. On the basis of its assessment, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
90. The Merger will therefore **not be referred** under section 33(1) of the Act.

Stephanie Canet
Director of Mergers
Competition and Markets Authority
28 June 2016

³⁷ [Merger Assessment Guidelines](#), from paragraph 5.8.1.