

Anticipated acquisition by Pharm-a-Care Laboratories Pty Limited of the Haliborange business of the Procter & Gamble Company

Decision on relevant merger situation and substantial lessening of competition

ME/6885/20

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

SUMMARY

1. Pharm-a-Care Laboratories Pty Limited (**PharmaCare**) has agreed to acquire the Haliborange business (**Haliborange**) of the Procter & Gamble Company (**P&G**) (the **Merger**). PharmaCare and Haliborange are together referred to as the **Parties** and, for statements referring to the future, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of PharmaCare and Haliborange is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the wholesale supply of vitamins, minerals and supplements (**VMS**) products in the UK, primarily in relation to VMS products marketed and intended for use by children (**children's VMS**).
4. The CMA assessed the impact of the Merger in the wholesale supply of children's VMS products in the UK. The CMA considered whether it would be appropriate to widen the frame of reference to include adults' VMS products. The CMA found that this was not appropriate, on the basis that there is limited demand-side substitutability between children's and adults' VMS products.

5. The CMA also considered whether the wholesale supply of children's VMS products should be further segmented to differentiate between VMS categories, retail channels or ingestion methods, as well as between branded and own-label products. Since no competition concerns arose on any plausible basis, the CMA did not find it necessary to conclude on whether such segmentation would be appropriate. However, where relevant, the CMA considered differences in the Parties' (and their competitors') offerings with respect to VMS categories, retail channels, ingestion methods and branded/own-label products in its competitive assessment.
6. The CMA investigated whether the Merger may be expected to result in a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the wholesale supply of children's VMS in the UK. The CMA found that (i) the Parties' combined share of supply post-Merger would be moderate, and the Merger would result in a relatively small increment; (ii) the Parties are not close competitors due to differences in their product proposition; and (iii) the Merged Entity will continue to face significant competitive constraint from several alternative suppliers of children's VMS products, including Bassetts and Vitabiotics as well as some smaller suppliers and own-label products.
7. 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 wholesale supply of children's VMS products in the UK.
8. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

9. PharmaCare is an Australia-headquartered manufacturer and wholesale supplier of health-related products such as VMS, protein powders, deodorants, skincare products and superfoods. It sells its products in the UK through its subsidiary Pharm-a-Care (Europe) Limited under various brands, including Bioglan and Sambucol. In 2019, the turnover of PharmaCare was approximately £[<] worldwide, of which approximately £[<] was generated in the UK.¹

¹ See the Final Merger Notice submitted by PharmaCare on behalf of the Parties dated 11 May 2020 (**FMN**), paragraph 12.

10. Haliborange is a business currently owned by P&G² that manufactures and supplies at the wholesale level a range of children's VMS marketed under the Haliborange brand. Haliborange products are sold in the UK, and to a more limited extent in Ireland and some parts of the Caribbean.³ In 2019, the turnover of Haliborange was approximately £[<] worldwide, of which £[<] was generated in the UK.⁴

Transaction

11. On 28 February 2020, P&G and PharmaCare entered into a Transaction Agreement under which PharmaCare will acquire all assets related to the Haliborange business from P&G.⁵

Jurisdiction

12. PharmaCare is an enterprise. Taking account of the assets related to the Haliborange business that will be transferred to PharmaCare under the Transaction Agreement,⁶ the CMA believes that Haliborange also constitutes an enterprise.⁷ As a result of the Merger, these enterprises will cease to be distinct.
13. The Parties overlap in the wholesale supply of children's VMS in the UK, for which the Parties estimate they have a combined share of supply by value in 2019 of [30-40]% with an increment of [0-5]% brought about by the Merger.⁸ The CMA therefore considers that the share of supply test in section 23 of the Act is met.
14. As a result, the CMA believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

² Haliborange was acquired by P&G in 2018 through its acquisition of Merck KGaA's OTC division. This acquisition was cleared by the European Commission in 2018, see European Commission Case M/8974 – [Procter & Gamble/Merck Consumer Health Business](#), 2018. See FMN, paragraph 35.

³ See Financial Summary – Target Business (2015-2019), Annex 04, FMN.

⁴ FMN, paragraph 13.

⁵ FMN, paragraph 11 and 14.

⁶ These assets include: (i) all relevant trademarks for the Haliborange brand; (ii) all third-party manufacturing contracts associated with Haliborange to the extent freely transferable; and (iii) associated business assets including customer lists, inventories, books and records associated with Haliborange (see FMN, paragraph 14-16).

⁷ See [Merger Assessment Guidelines](#), paragraph 3.2.4.

⁸ FMN, paragraph 39 and Table 1 below. The CMA performed robustness checks on the Parties' share estimates using alternative data sources and found the resulting share calculations to be similar to those produced by the Parties. The CMA therefore uses the Parties' estimates throughout the decision.

15. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 12 May 2020 and the statutory 40 working day deadline for a decision is therefore 7 July 2020.

Counterfactual

16. 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.⁹
17. In this case, the CMA has not found any evidence supporting a different counterfactual, and neither PharmaCare nor third parties have made submissions in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Frame of reference

18. 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 merging 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.¹⁰
19. The Parties overlap in the wholesale supply of VMS products in the UK, primarily in relation to children's VMS products.¹¹

⁹ *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).

¹⁰ *Merger Assessment Guidelines*, paragraph 5.2.2.

¹¹ The Parties overlap to a limited extent in the wholesale supply of VMS products for adults, on the basis that Haliborange offers one product for the entire family, being Vitamin C effervescent tablets. However, as the Parties' combined shares of supply in the market for adults' VMS products is very small ([0-5]%), the CMA does not believe the Merger gives rise to a realistic prospect of an SLC in relation to VMS products for adults and this overlap is not considered further in this decision.

Product scope

20. The CMA's approach to define the frame of reference is to begin with the narrowest plausible candidate product frame of reference in which the Parties overlap and to assess if this should be widened on the basis of demand-side substitution.
21. As its starting point, the CMA considered the wholesale supply of children's VMS and then assessed whether the wholesale supply of children's VMS should be:
 - (a) widened to include adults' VMS products; or
 - (b) further segmented (in line with the CMA's previous approach in [NBTY/Dr Organic Limited](#))¹² by (i) VMS categories; (ii) retail channels; or (iii) ingestion methods. The CMA also considered a further possible segmentation, between branded and own-label products.
22. Each of these possible delineations is discussed below.

Children's and adults' VMS products

23. Some VMS products are age-specific, insofar as they are intended for consumption by adults or children. PharmaCare sells both adults' and children's VMS, while Haliborange's products are primarily intended for children.¹³ The CMA considered whether children's VMS and adults' VMS should form separate frames of reference.
24. PharmaCare submitted that there is some degree of demand-side substitutability between adults' and children's VMS products and a significant degree of supply-side substitutability (the main differences being the product format and packaging). While Pharmacare considers that both children's and adults' VMS may form part of a single 'all VMS' product market, it noted that there is a degree of differentiation between their brand positioning, formulations (eg quantity of active ingredients) and demand characteristics.¹⁴
25. The CMA has not previously considered the distinction between children's and adults' VMS products in the UK. In the present case, the CMA's investigation found that:

¹² [CMA's investigation of the anticipated acquisition by NBTY Inc. of Dr Organic Limited \(ME/6559/15\)](#), 14 December 2015 ([NBTY/Dr Organic Limited](#)).

¹³ See footnote 11.

¹⁴ FMN, paragraph 89(a).

- (a) Suppliers of VMS products (including the Parties) market their children's VMS products as specifically intended for children and not adults;¹⁵
 - (b) P&G's internal documents show that Haliborange's focus is on children's VMS products (with no mention of adults' VMS products), and that it compares Haliborange's children's VMS products to children's VMS products of its key competitors.¹⁶ Evidence from PharmaCare's internal documents indicates that, where it discusses its children's VMS range, its marketing strategy is specifically targeted at parents of babies and children;¹⁷
 - (c) Third parties indicated that there is limited demand-side substitutability between children's and adults' VMS products mainly because the contents and dosages of adults' VMS products are not suitable or recommended for children.
26. On the basis of the above evidence, the CMA considers that it is appropriate to treat children's VMS products as a product frame of reference which is distinct from adults' VMS products. The CMA has therefore focused its competitive assessment on the wholesale supply of children's VMS products.

VMS categories

27. VMS products are intended to provide different combinations of vitamins and minerals targeting different health concerns or conditions.
28. The CMA previously considered in *NBTY/Dr Organic Limited* whether to segment the frame of reference to differentiate between different VMS categories (ie different formulas of vitamins and minerals, or products for different intended use). However, as no competition concerns were found on any basis, the CMA did not conclude on whether segmentation by VMS categories was appropriate.¹⁸
29. The Parties do not overlap in any material way in any one VMS category, given that Haliborange predominantly offers a multi-vitamin product while PharmaCare's products are focused on particular benefit areas. As such, the Parties are not close competitors in any specific category and no competition concerns arise on any plausible basis. Therefore, the CMA has not found it necessary to conclude on whether segmentation by VMS category is appropriate in this case. The CMA considers the degree of differentiation

¹⁵ See Sambucol.co.uk/shop/kids and bioglan.co.uk/smartkids/. Haliborange's website is specifically aimed at 'vitamins and supplements for kids', see www.haliborange.com.

¹⁶ See [redacted], Annex 08, FMN. See [redacted], Annex 09, FMN.

¹⁷ See [redacted], PharmaCare's response to s109 Notice. See [redacted], PharmaCare's response to s109 Notice.

¹⁸ *NBTY/Dr Organic Limited*, paragraph 25.

between the Parties' products (including their intended use) in the competitive assessment.

Retail channels

30. VMS products are available through different retail channels, such as supermarkets, health food stores, pharmacies, online (eg Amazon) and also through discounters/bargain stores. The CMA considered whether different retail channels should form separate frames of reference.
31. PharmaCare submitted that different retail channels compete against one another in the supply of VMS products and that consumers regularly switch between retail channels in response to price changes. PharmaCare therefore submitted that it may not be appropriate to segment the market based upon retail channels.¹⁹
32. In *NBTY/Dr Organic Limited*, third parties generally told the CMA that consumers shop across all retail channels and that price changes in one channel could result in significant switching to other retail channels. However, as no competition concerns were found on any basis, the CMA did not conclude on whether segmentation by retail channel was appropriate.²⁰
33. In the present case, while third party evidence was mixed, it generally supports the view that consumers tend to shop across all retail channels. A few third parties noted that, given the importance of brand loyalty with regard to children's VMS products, consumers would switch retail channel rather than switching to a different brand. The Parties' internal documents largely indicate that they monitor sales of children's VMS across all retail channels.²¹ The CMA notes that while P&G's internal documents [redacted].
34. On the basis of the above evidence, the CMA considers that there appears to be a degree of substitutability between different retail channels. The CMA notes that the main children's VMS suppliers are largely present across all retail channels and that the main competitor set does not differ substantially across channels. This may suggest that it is not appropriate to further segment the market on the basis of the retail channel used. In any event, as the Parties sell their children's VMS products largely across all retail channels and PharmaCare's presence is relatively small in all these channels, no competition concerns arise on any plausible basis. Therefore, the CMA has not found it necessary to conclude on whether segmentation by retail channel

¹⁹ FMN, 89 (c).

²⁰ *NBTY/Dr Organic Limited*, paragraphs 27 - 30.

²¹ See [redacted], PharmaCare's response to s109 Notice. See also [redacted], PharmaCare's response to s109 Notice. See [redacted], Annex 008, P&G's response to s109 Notice. [redacted]; See also [redacted], Annex 012, P&G's response to s109 Notice; [redacted], Annex 009, P&G's response to s109 Notice; and [redacted], Annex 011, FMN

is appropriate in this case. The CMA considers the degree of differentiation between the Parties' products (including in terms of the retail channels used) in the competitive assessment.

Ingestion methods

35. VMS products are available in different formats or ingestion methods, with some products offered in liquid form and others in solid form (as tablets, chewable, or gummies). While both Parties offer liquid and solid form products, Haliborange generates the majority of its sales from [REDACTED], and PharmaCare generates the majority of its sales from [REDACTED] (its largest selling product being [REDACTED]).²² The CMA considered whether liquid and solid form products should form separate frames of reference.
36. PharmaCare submitted that some consumers or age groups may have a preference for certain types of ingestion methods. It also indicated, however, that given all VMS products serve the same purpose, there is likely to be some degree of substitutability between products with different ingestion methods. Therefore, PharmaCare submitted that it did not believe it appropriate to segment the market based upon different ingestion methods.²³
37. In *NBTY/Dr Organic Limited*, third parties told the CMA that VMS products supplied in tablet form are likely to constitute a separate product frame of reference to VMS products in liquid form because consumers were unlikely to switch to alternative forms, eg liquid, in response to a small but significant non-transitory increase in price in VMS tablet form. However, as no competition concerns were found on any basis, the CMA did not conclude on whether segmentation by ingestion method was appropriate.²⁴
38. In the present case, third parties indicated there may be limited demand-side substitutability between liquid and solid form products (particularly for some age categories), given that liquid form products are generally given to babies and toddlers, and that switching between these formats occurs as children grow up and are able to ingest chewable products.
39. On the other hand, the CMA notes that some evidence from the Parties points to a certain degree of demand-side substitutability between liquid and solid form products. In particular, one P&G's internal document [REDACTED].²⁵ PharmaCare also [REDACTED].

²² PharmaCare's response to question 13 of the CMA's request for information 1 (RFI1).

²³ FMN, 89(d).

²⁴ *NBTY/Dr Organic Limited*, paragraphs 31 - 33.

²⁵ See slide 40 of Annex 9, FMN.

40. Whilst the evidence is mixed, the CMA considers that some evidence suggests that there is limited substitutability between liquid and solid form products (such that these should form separate frames of reference). However, given that the Parties' combined share of supply remains moderate and/or the increment arising from the Merger remains relatively small even when calculated separately for liquid and solid form products,²⁶ no competition concerns arise on any plausible basis. Therefore, the CMA has not found it necessary to conclude on whether segmentation by ingestion method is appropriate in this case. The CMA considers the degree of differentiation between the Parties' products (including in terms of the ingestion method) in the competitive assessment.

Branded versus own-label children's VMS

41. The CMA has not previously considered segmentation between branded and own-label products in respect of VMS products (although it has considered this previously for OTC pharmaceutical products). Given that the Parties overlap in branded products only,²⁷ the CMA considered whether further segmentation between branded and own-label products may be appropriate.
42. PharmaCare submitted that brand loyalty is especially important in the children's VMS space, although it submitted that own-label products of major retailers are also very effective competitors and have established strong trust levels with consumers.²⁸
43. Third party evidence indicates that consumers consider that brand is amongst the most important factors when purchasing children's VMS products. Third parties were generally of the view that there is some, but limited, demand-side substitutability between branded and own-label children's VMS products mainly because consumers tend to be brand loyal when it comes to children's VMS products.
44. P&G's internal documents indicate that it largely monitors branded competitors,²⁹ although a few P&G's internal documents indicate that it considers own-label products as competitors, alongside branded suppliers.³⁰

²⁶ See paragraphs 57-58, Table 2 and footnote 37.

²⁷ PharmaCare submitted that it does not currently provide products on an own-label basis and does not have any intention to do so in the next two years, FMN, paragraphs 27 and 33.

²⁸ FMN, 29(a).

²⁹ See [redacted], Annex 011, P&G's response to s109 Notice. Also see [redacted], Annex 009, P&G's response to s109 Notice.

³⁰ [redacted], Annex 007, P&G's response to s109 Notice, [redacted]. See [redacted], Annex 09, P&G, FMN, [redacted]. See also [redacted], Annex 06, P&G's response to s109 Notice, [redacted].

45. On the basis of the above evidence, the CMA considers that there may be a limited degree of substitutability between branded and own-label products for children's VMS products. However, given that the Parties' combined share of supply remains moderate and the increment arising from the Merger remains relatively small even when excluding own-label products,³¹ no competition concerns arise on any plausible basis. Therefore, the CMA has not found it necessary to conclude on whether segmentation between branded and own-label products is appropriate in this case. The CMA considers the degree of competition from alternative suppliers (including and excluding own-label products) in its competitive assessment.

Conclusion on product scope

46. For the reasons set out above, the CMA has considered the impact of the Merger within the wholesale supply of children's VMS products, without further segmentation. Where relevant, it has considered differences in the Parties' (and their competitors') offerings with respect to VMS categories, retail channels and ingestion methods, as well as the competitive constraint from branded/own-label products, in the competitive assessment.

Geographic scope

47. PharmaCare submitted that the narrowest geographic market in this case is national in scope.³²
48. The CMA notes that Haliborange generates the vast majority of its sales in the UK,³³ and the CMA did not find any evidence from P&G's internal documents that indicated that it monitors competitors from outside the UK in connection with its Haliborange business. The CMA also identified two PharmaCare internal documents which discuss its children's VMS products on a national level.³⁴
49. Both the Parties' products, and those of other suppliers of children's VMS in the UK, are available nationwide.
50. Further, the CMA has not received any evidence from third parties to suggest that a geographic frame of reference which is wider or narrower than a national frame of reference would be more appropriate.

³¹ See footnote 38 below.

³² FMN, paragraphs 90-91.

³³ See paragraph 10.

³⁴ [redacted], PharmaCare's response to s109 Notice; [redacted], PharmaCare's response to s109 Notice.

51. On the basis of the above evidence, the CMA has assessed the competitive impact of the Merger at the national level, in the UK.

Conclusion on frame of reference

52. For the reasons set out above, the CMA has assessed the impact of the Merger within the wholesale supply of children’s VMS products in the UK.

Competitive assessment

Horizontal unilateral effects

53. 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 to degrade quality on its own and without needing to coordinate with its rivals.³⁵ Horizontal unilateral effects are more likely when the merging 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 the wholesale supply of children’s VMS products in the UK.
54. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects within the wholesale supply of children’s VMS in the UK, the CMA considered: (i) shares of supply of the Parties and their competitors; (ii) closeness of competition between the Parties; and (iii) competitive constraints posed by alternative suppliers of children’s VMS products.

Shares of supply

Children’s VMS products

55. PharmaCare submitted that the Parties’ combined shares of supply in the wholesale supply of children’s VMS products in the UK (by value of sales) in 2019 was [30-40]% with an increment of [0-5]%, as set out in Table 1 below.³⁶

Table 1: Shares of supply for children’s VMS products in the UK (2019)

Firm	% of sales by value (2019)
PharmaCare	[0-5]%
Haliborange	[20-30]%
Parties combined	[30-40]%
Vitabiotics	[20-30]%
Bassetts	[10-20]%
Own label	[5-10]%
Abidec	[5-10]%

³⁵ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

³⁶ FMN, paragraph 142 (b).

Firm	% of sales by value (2019)
D Drops	[0-5]%
Total market size	100%

Source: Parties' estimates using IRI data.

56. The above shares of supply estimates show that the Parties' combined share of supply within the wholesale supply of children's VMS products in the UK is moderate and the increment that PharmaCare represents is relatively small. These estimates also show that the Parties face substantial competition from other suppliers, in particular Vitabiotics and Bassetts, as well as some smaller suppliers and own-label products.

Segmentation within children's VMS products

57. As noted in paragraph 40, the CMA found that solid form children's VMS products may not be substitutes for liquid form products for some consumers (although the CMA did not conclude on whether these should form separate frames of reference). Given that a substantial proportion ([>]) of PharmaCare's children's VMS products sales come from a [>] ([>]), the CMA also considered shares of supply on the basis of children's liquid VMS products only, as set out in Table 2.

Table 2: Shares of supply for children's liquid VMS products in the UK (2019)

Firm	% of sales by value (2019)
PharmaCare	[5-10]%
Haliborange	[5-10]%
Parties combined	[10-20]%
Vitabiotics	[30-40]%
Abidec	[20-30]%
D Drops	[5-10]%
Optibac	[0-5]%
Minavex	[0-5]%
Own-label	[0-5]%
Total	100%

Source: Parties' estimates using IRI data.

58. The CMA notes that while the increment brought by the Merger is higher on this basis, the Parties' combined share of supply for children's liquid VMS products in the UK is lower, at only [10-20]%. Furthermore, there are at least two other stronger competitors remaining in the segment with higher shares, ie Vitabiotics and Abidec.³⁷
59. The CMA also considered the Parties' shares of supply on the basis of the other possible segments set out in the frame of reference section above, namely within certain VMS categories and retail channels, and for branded

³⁷ As a further check, the CMA considered the Parties estimates of shares of supply for solid form children's VMS products. Under this segment, the CMA found that the Parties' combined share of supply remains below 40% ([30-40]%) with a very small ([0-5]%) increment. See FMN, Table 8.

products only.³⁸ Under any plausible segmentation, the combined shares of supply were either sufficiently low or the increment resulting from the Merger sufficiently small such that the shares did not give rise to concern.

Conclusion on shares of supply

60. On any plausible basis, the Parties' combined share of supply within the wholesale supply of children's VMS products in the UK is moderate and the increment that PharmaCare represents is relatively small. The shares of supply also show that the Parties face substantial competition from other suppliers, in particular Vitabiotics and Bassetts, as well as some smaller suppliers and own-label products.

Closeness of competition

61. To assess the closeness of competition between the Parties within the wholesale supply of children's VMS products in the UK, the CMA has considered: (i) similarity of the Parties' product/service proposition; (ii) evidence from internal documents; and (iii) third party views.

Similarity of the Parties' product/service proposition

62. PharmaCare submitted that, while a number of the Parties' individual products may overlap on the basis of strict categorisation such as key active ingredients, the Parties' brands and products are not close competitors. Amongst other points, PharmaCare noted:³⁹
- (a) Haliborange's product range is almost exclusively intended for use by children while PharmaCare's brands are not 'child-centric', albeit it has two sub-brands for children ('Sambucol For Kids' and 'Bioglan SmartKids');
 - (b) The Sambucol range (which uses black elderberries as its base) is intended to support children's 'immunity' and the Bioglan range is aimed at specific health concerns such as gut, eyes, and bone, while Haliborange's products are aimed at general health and growth of children.
 - (c) For PharmaCare, [X] is its biggest selling product in its children's range and Haliborange does not offer a similar product.

³⁸ Based on data submitted by the Parties, the CMA estimated the share of supply for branded products only, and found that the Parties' combined share of supply would remain below 40% ([30-40]%) and the increment remains relatively small ([0-5]%).

³⁹ FMN, paragraph 143.

63. The CMA's investigation found that the Parties' products were substantially differentiated, including in their relative price point, brand positioning, marketing and intended use. In particular, evidence submitted by the Parties indicated that PharmaCare's children's VMS products tended to be positioned as more premium products, sold at higher price points, and were less likely to be sold through supermarkets or discount channels. Specifically:
- (a) PharmaCare listed its closest competing products to several of Haliborange's products where PharmaCare's had a higher price per unit compared to the Haliborange products.⁴⁰
 - (b) Evidence submitted to the CMA showed that Haliborange sells a greater proportion of its products through supermarkets than PharmaCare and Haliborange sells its products through discounters, whereas PharmaCare does not.⁴¹
 - (c) PharmaCare's children's VMS products are marketed as targeting specific problem areas, using particular active ingredients. By contrast, the Haliborange range is a more mass-market, multi-vitamin product intended to support general health and development.⁴²
64. No evidence received by the CMA indicates that PharmaCare's growth plans would have resulted in the Parties becoming closer competitors in the future, given that the [redacted].⁴³

Internal documents

65. PharmaCare's internal documents did not include any analysis of the competitive conditions of the VMS market in the UK. This appears consistent with the fact that PharmaCare does not currently have a particular focus on the UK market.
66. Evidence from P&G's internal documents indicates that it considers [redacted] to be its main competitors to Haliborange in the supply of children's VMS products.⁴⁴ In addition, in one of these internal documents,⁴⁵ P&G also mentions [redacted] as one of its main competitors and in a few of these documents mentions own-label products alongside branded competitors.⁴⁶ On the other

⁴⁰ See response to Q14 of RF11 dated 3 April 2020.

⁴¹ See response to Q7 of RF11 dated 3 April 2020.

⁴² See response to Q7 of RF12 dated 23 April 2020.

⁴³ Response to question 23, PharmaCare's response to RF11. P&G submitted that it does not have any products under development, response to question 23, P&G's response to RF11.

⁴⁴ See [redacted], Annex 08, P&G, FMN; [redacted], Annex 09, P&G, FMN; [redacted], Annex 10, P&G, FMN; [redacted], Annex 11, P&G, FMN; [redacted], Annex 007, P&G's response to s109 Notice; [redacted], Annex 06, P&G's response to s109 Notice.

⁴⁵ [redacted], Annex 09, P&G, FMN.

⁴⁶ See paragraph 44 and footnote 30 above.

hand, the CMA did not find any mention of [§<]. The evidence from these internal documents supports a finding that P&G does not consider PharmaCare to be a close competitor to its Haliborange products.

Third party views

67. The majority of third parties who responded to the CMA's investigation did not consider PharmaCare's children's VMS products to compete closely with Haliborange. Third parties generally noted that PharmaCare is a relatively small player in the UK and that its products target specific benefit areas while Haliborange offers a more general, mass-market product. Some also noted that PharmaCare's Bioglan brand is priced higher compared to Haliborange, while its Sambucol brand is a more niche product and mainly comes in liquid form. While some third parties noted certain similarities between Haliborange and Bioglan in terms of the products' formats (ie they both specialise in gummy products), overall the evidence from third parties indicates that the Parties are not close competitors.

Conclusion on closeness of competition

68. Overall, based on the evidence above, the CMA considers that the Parties are not close competitors due to differences in their product propositions. Specifically, Haliborange offers a solid form, multi-vitamins designed to promote general health aimed at a mass-market, whereas PharmaCare's products are more premium and aimed at specific health concerns with its most popular product being 'Sambucol For Kids' in liquid form.

Competitive constraints

69. Unilateral effects are more likely where customers have little choice of alternative suppliers. The CMA has therefore assessed whether there are alternative suppliers which could provide a competitive constraint on the Merged Entity within the wholesale supply of children's VMS products in the UK.
70. The CMA has considered within its assessment: (i) evidence from internal documents; and (ii) third party views.

Parties' views

71. PharmaCare submitted that the Merged Entity will remain subject to significant constraint from a range of strong competitors post-Merger,

including Vitabiotics, Bassetts, P&G's brands that are not subject to the Merger (such as Seven Seas) and own-label products, amongst others.⁴⁷

Internal documents

72. PharmaCare's internal documents did not include any analysis of the competitive conditions of the VMS market in the UK. This appears consistent with the fact that PharmaCare does not currently have a particular focus on the UK market.
73. P&G's internal documents indicate that Haliborange will continue to be constrained by other closer competitors. [X].⁴⁸ [X].⁴⁹ [X].⁵⁰

Third party views

74. Third party feedback from both retailers and competitors indicates that the Merged Entity will continue to face strong competition from other suppliers, with Bassetts and Vitabiotics mentioned most frequently as the strongest constraints. Evidence from third parties also indicate that Vitabiotics' and Bassetts' children's VMS products are generally priced in line with Haliborange's children's VMS products while PharmaCare's tend to be priced at a more premium level. Moreover, third parties variously identified up to eleven other alternative children's VMS suppliers which would continue to provide some competitive constraint on the Parties' products.⁵¹

Conclusion on competitive constraints

75. Overall, based on the evidence above, the CMA considers that the Merged Entity will continue to face significant competitive constraint from several alternative suppliers of children's VMS products post-Merger. In particular, it will face strong competitive constraint from Bassetts and Vitabiotics as well as some competitive constraint from several smaller suppliers and own-label products.

Conclusion on horizontal unilateral effects

76. For the reasons set out above, the CMA considers that the Parties' combined share of supply post-Merger would be moderate, and that the Merger would

⁴⁷ FMN, paragraph 154-155.

⁴⁸ See slides 37, 38, 39, and 40 of Annex 9, FMN.

⁴⁹ See slide 10 of Annex 12 of the response to RF11.

⁵⁰ See paragraph 44 and footnote 30 above.

⁵¹ These eleven alternative suppliers were: Abidec, BetterYou, Centrum, Chewy Vites, D Drops, Lil Critters, Minadex, Minavex, Nature's Plus Animal Parade, Nature's Aid and Solgar. Own-label suppliers were also noted as providing a constraint by some third parties.

result in a relatively small increment. The CMA also considers that the Parties are not close competitors due to differences in their product propositions. Finally, the CMA also found that the Merged Entity will continue to face significant competitive constraint from several alternative suppliers of children's VMS products, including Bassetts and Vitabiotics, as well as some smaller suppliers and own-label products.

77. Accordingly, the CMA concluded 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 wholesale supply of children's VMS products in the UK.

Barriers to entry and expansion

78. 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.⁵²
79. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

80. The CMA contacted customers/retailers and competitors of the Parties. Third party comments have been taken into account where appropriate in the competitive assessment above.
81. The majority of third parties did not express any concerns about the Merger. Two third parties raised concerns about the Merger, the first relating to reduced competition/customer choice and the second relating to a reduction in promotional activity, leading to higher prices. The evidence gathered by the CMA indicates that the Merger will not have a significant impact on competition as the Merged Entity will have a moderate share of supply, and there will remain several other suppliers of children's VMS products in the UK that consumers could switch to. These concerns therefore did not alter the CMA's assessment of the Merger above.

⁵² [Merger Assessment Guidelines](#), from paragraph 5.8.1.

Decision

82. For the reasons set out above, 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.
83. The Merger will therefore **not be referred** under section 33(1) of the Act.

Maria Duarte
Director
Competition and Markets Authority
23 June 2020