

Completed acquisition by Bestway Panacea Holdings Limited of Lexon UK Holdings Limited andASUREX Limited

Decision on relevant merger situation and substantial lessening of competition

ME/7042/23

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 15 June 2023. Full text of the decision published on 28 June 2023.

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. On 14 April 2023, Bestway Panacea Holdings Limited (**Well**) completed the acquisition of Lexon UK Holdings Limited (**Lexon**) and ASUREX Limited (**ASUREX**) (together, the **Targets**) (the **Merger**). Well, Lexon and ASUREX are together referred to as the **Parties**.
2. The Parties overlap in the operation of retail pharmacies in certain local areas in the UK.
3. In this case, the Parties waived certain procedural rights, including their right to an issues meeting, and to challenge the substantial lessening of competition (**SLC**) finding at phase 1, and requested that the case be fast tracked to the consideration of undertakings in lieu of reference (**UILs**).
4. Although the price of prescribed medicines is fixed by regulation, the CMA is concerned that the Merger might lead to worse outcomes in relation to other parameters on which pharmacies can compete, including the quality and speed of service, opening hours (over and above those set out by the regulatory body), the stocks of medicines that the pharmacy has and waiting times. The CMA considered how geographically proximate the Parties' pharmacies are to each other and how

many competing pharmacies are in each local area. Based on this evidence, the CMA found that the Merger gives rise to a realistic prospect of an SLC in the operation of retail pharmacies in 12 local areas in the UK, which are listed in the Annex to this decision.

5. While the Parties also overlap in the supply of pharmaceutical wholesaling, the CMA has found that the Merger will not give rise to an SLC in this market as both Parties have a limited presence and face several alternative suppliers.
6. The CMA is therefore considering whether to accept UILs under section 73 of the Enterprise Act 2002 (the **Act**). Well has until 22 June 2023 to offer undertakings that might be accepted by the CMA. If no such undertakings are offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.

ASSESSMENT

PARTIES

7. Well operates a retail pharmacy chain in the UK, with approximately 750 pharmacies, as well as an online pharmacy, Well.co.uk.¹ Well is part of Bestway Group, which also has broader operations in the pharmaceutical sector, supplying wholesale pharmaceutical services through its Bestway Medhub and Wardles businesses.² The worldwide turnover of the Bestway Group in the financial year 2022 was £4.51 billion and the turnover of Well was £832.5 million, which was entirely generated in the UK.
8. Lexon operates 46 retail pharmacies in the UK under the Knights Pharmacy brand and an online pharmacy, Chemist.net, through its subsidiary Norchem Healthcare Limited.³ Lexon also operates a wholesale pharmaceutical business in the UK, as well as supplying software products to pharmacies, including the Spider platform, which enables customers to order all their pharmaceutical needs through a single platform, and the Expos Xtra platform, a point-of-sale software.⁴
9. Lexon also operates the following businesses within the pharmaceutical sector:
 - (a) Key Pharmaceuticals, which is a specialist developer and manufacturer of generic pharmaceuticals;
 - (b) PharmData (in which it holds an 80% ownership interest), a specialist data processing platform that uses NHS data to provide pharmacies with data analytics and insights; and
 - (c) Dispex (in which it holds an 51% ownership interest), a buying group that supplies products/services and training programs to doctors in remote UK villages.⁵
10. The turnover of Lexon in the financial year 2022 was approximately £270 million worldwide, of which approximately £[<] was generated in the UK.⁶

¹ Final Merger Notice submitted to the CMA on 24 May 2023 (FMN), paragraph 3.2.

² FMN, paragraph 3.3.

³ FMN, paragraph 3.7.

⁴ FMN, paragraphs 3.5 and 3.6.

⁵ FMN, paragraph 3.8.

⁶ FMN, paragraph 3.4.

11. Asurex is a wholesaler of branded perfumes trading as Knights Fragrances and primarily supplies perfumes to pharmacies and department stores.⁷ The turnover of Asurex in the financial year 2022 was £[<] worldwide, of which £[<] was generated in the UK.⁸
12. While the Parties do not overlap in wholesale services for perfume, there is a vertical relationship between Asurex's upstream activities in this market and the Parties' downstream retail activities. The information available indicates that Asurex has a limited position in the upstream market (given its UK revenues amounted only to £[<] within the context of the UK fragrance market's estimated value of £1 to £2 billion).⁹ The CMA therefore considers that this vertical relationship does not give rise to competition concerns on any plausible basis and wholesale services for perfume are not considered any further in the decision.

TRANSACTION

13. Well, Kericho Holdings Limited (the **Lexon Seller**), [<] and [<] entered a sale and purchase agreement on 19 March 2023, pursuant to which Well acquired 100% of the shares of Lexon and Asurex.¹⁰ Prior to completion, the Lexon Seller completed a re-organisation of Lexon in order to retain certain legal entities which were owned by Lexon.¹¹
14. The transaction completed on 14 April 2023 and was not subject to any conditions prior to completion.¹² The Merger consideration was £[<].¹³

PROCEDURE

15. The CMA commenced its Phase 1 investigation on 30 May 2023.
16. On 23 May 2023, the Parties had informed the CMA that they believed that the Merger gives rise to a realistic prospect of an SLC arising from horizontal unilateral effects in the operation of retail pharmacies in certain local areas in the UK¹⁴ and requested that the case be fast tracked to the consideration of UILs. As part of the request, the Parties agreed to waive their certain procedural rights, including their

⁷ FMN, paragraph 3.9.

⁸ FMN, paragraph 3.9.

⁹ Parties' response to the CMA's request for information dated 4 April 2023, paragraph 3.2 (**RFI2 response**).

¹⁰ FMN, paragraph 2.1.

¹¹ FMN, paragraph 2.8.

¹² FMN, paragraph 2.4.

¹³ FMN, paragraph 2.3.

¹⁴ These were 12 SLCs centred on the sites listed in the Annex.

right to an issues meeting, in relation to the operation of retail pharmacies in certain local areas in the UK.

17. As set out in the CMA's guidance,¹⁵ merger parties are able to waive their rights in relation to certain procedural steps within a merger investigation as well as its right to challenge the SLC decision at phase 1 in order to enable a binding outcome to be arrived at more quickly. In agreeing to fast-track the case to the consideration of UILs, the CMA has, in keeping with the process set out in its guidance, had regard to the efficient conduct of the investigation and decided that it was appropriate to proceed with an accelerated Phase 1 timetable.

JURISDICTION

18. Each of Well, Lexon andASUREX is an enterprise within section 129 of the Act. As a result of the Merger, these enterprises have ceased to be distinct.
19. The UK turnover of Lexon andASUREX exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
20. The Merger completed on 14 April 2023 and the CMA was first informed about it on 9 March 2023. The four-month deadline for a decision under section 24 of the Act is 14 August 2023.
21. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
22. The initial period for consideration of the Merger under section 34ZA(3) of the Act commenced on 30 May 2023 and the statutory 40 working day deadline for a decision is therefore 24 July 2023.

COUNTERFACTUAL

23. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).¹⁶ For completed mergers the 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

¹⁵ [Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), paragraphs 7.8-7.13.

¹⁶ See [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 3.1.

conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.¹⁷

24. In this case, the CMA has not seen any evidence supporting a different counterfactual. The Parties submitted that the relevant counterfactual is the pre-Merger conditions of competition. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

FRAME OF REFERENCE

25. 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.¹⁸
26. The Parties primarily overlap in the operation of retail pharmacies in the UK. The Parties also overlap in the wholesale supply of pharmaceuticals.

Retail pharmacy services

Product scope

27. The Parties submitted that pharmaceutical products are categorised into different groups, including prescription-only medicines (**POMs**) and pharmacy-only medicines (**P-medicines**), which are pharmaceutical drugs that do not require a prescription but can only be sold under pharmacist supervision.¹⁹ The Parties further submitted that the CMA should adopt the same approach as in previous CMA cases (in particular *Celesio/Sainsbury's*²⁰) where the CMA defined a single market for the operation of retail pharmacies, as opposed to segmenting these by the type of product or service sold, or the type of customer.²¹
28. The CMA previously considered competition between retail pharmacies in *Celesio/Sainsbury's*, which was subject to a Phase 2 investigation. In that case, the CMA found that, from the supply side, pharmacies are the only or predominant

¹⁷ [CMA129](#), from paragraph 3.12.

¹⁸ [CMA129](#), paragraph 9.4.

¹⁹ FMN, paragraph 13.2.

²⁰ [Celesio AG / Sainsbury's Pharmacy Business \(Celesio/Sainsbury's\) merger inquiry \(2016\)](#).

²¹ FMN, paragraph 13.16. The Parties referred to the approach taken in *Celesio/Sainsbury's* and *Lloyds/Independent*.

suppliers of POMs, P-medicines and pharmacy services, and that many of the parameters of competition are determined at the store level.²² As such, the CMA considered it was appropriate to assess competition between retail pharmacies.²³

29. The evidence received by the CMA provided no reason to deviate from the product frame of reference in *Celesio/Sainsbury's*, and the CMA considers that competition between retail pharmacies is an appropriate starting point for the competitive assessment of the Merger in this case.

Geographic scope

30. The Parties submitted that the appropriate geographic frame of reference should be the catchment areas adopted in *Celesio/Sainsbury's*.²⁴
31. In *Celesio/Sainsbury's*, the CMA assessed the merger at the local level on the basis of average catchment areas, which were calculated as the area that captured 80% of prescription customers.²⁵ The CMA distinguished between four types of areas: 'conurbations' (ie urban), 'cities and towns', 'rural' areas and 'very rural' areas.²⁶ The average customer catchment areas from that case are shown in Table 1. Given that the nature of the pharmacies operated by Sainsbury's and Lloyds²⁷ was different (supermarket vs non-supermarket), the CMA found different catchment areas for each type of pharmacy.
32. Like Lloyds pharmacies in the *Celesio* case, Well and Lexon operate non-supermarket pharmacies, and the CMA therefore used the catchment areas for Lloyds as the starting point for assessment in this case. The CMA tested with third parties whether the radiuses used for non-supermarket pharmacies in *Celesio/Sainsbury's* would still be an appropriate geographic frame of reference for non-supermarket pharmacies. The majority of third-party responses agreed,²⁸ although a few third parties submitted they were unable to comment given the calculations were based on the CMA's own analysis.²⁹
33. The CMA has therefore used the average radius for pharmacies that was applied in *Celesio/Sainsbury's* for the purposes of its assessment, as set out in Table 1.

²² [Celesio AG / Sainsbury's Pharmacy Business \(2016\) - Final Report](#), paragraph 5.6.

²³ [Celesio AG / Sainsbury's Pharmacy Business \(2016\) - Final Report](#), paragraph 5.7.

²⁴ FMN, paragraph 13.20.

²⁵ [Celesio AG / Sainsbury's Pharmacy Business \(2016\) - Final Report](#), paragraph, 5.12.

²⁶ [Celesio AG / Sainsbury's Pharmacy Business \(2016\) - Final Report](#), paragraph, 5.12.

²⁷ Lloyds was a wholly owned subsidiary of Celesio at the time of the CMA's *Celesio/Sainsbury's* investigation.

²⁸ Responses to the CMA's questionnaire from third parties.

²⁹ Responses to the CMA's questionnaire from third parties.

Table 1: Average radius of catchment areas

| Area type | Lloyds (miles) |
|---------------|----------------|
| Conurbation | 1.4 |
| City and town | 1.4 |
| Rural | 2.3 |
| Very rural | 3.6 |

Wholesale pharmaceuticals

Product scope

34. The Parties submitted that there is a single market for the wholesale supply of pharmaceuticals.³⁰ In particular, they submitted that while there are some limitations on the constraint ‘short-line’ wholesalers (that supply a more limited product range) are able to exert on ‘broad-line’ wholesalers (that supply a broader range of products), the situation is asymmetric and broad-liners exert a significant constraint on short-liners.³¹ As such, and because both Parties are short-line wholesalers, they considered that the CMA should adopt a single market, following the same approach as in previous cases such as *Celesio/Sainsbury’s*.
35. In *Celesio/Sainsbury’s*, the CMA considered there was a distinction between ‘broad-line’ wholesalers and ‘short-line’ wholesalers,³² although it considered wholesalers collectively when assessing the potential impact of the merger.³³ Previous CMA investigations indicated there are similarities and differences between short-line and broad-line wholesalers and the competitive constraint they impose on each other.³⁴
36. In the current case, both Parties are short-line wholesalers. The CMA considers that there may be an asymmetric constraint between broad-line and short-line wholesalers. However, on a cautious basis the CMA has considered where the Parties only compete with other short-line wholesalers as part of its competitive assessment.

³⁰ FMN, paragraph 13.1.

³¹ FMN, paragraph 13.10.

³² [Celesio AG / Sainsbury’s Pharmacy Business \(2016\) - Final Report](#), paragraph 2.27.

³³ [Celesio AG / Sainsbury’s Pharmacy Business \(2016\) - Final Report](#), paragraph 7.350.

³⁴ [Full text of the decision - AAH/Sangers \(publishing.service.gov.uk\)](#), paragraphs 40 and 41.

Geographic scope

37. The Parties submitted that there should be a single national market for the wholesale supply of pharmaceuticals.³⁵
38. In *Celesio/Sainsbury's*, the CMA found that broad-line wholesalers tended to supply either regionally or nationally.³⁶ However, Celesio's broad-line wholesaler subsidiary, AAH, operated nationally and the CMA assessed the potential vertical effects of the merger on a national basis.³⁷ In the present case, both Parties offer wholesale services on a national basis.³⁸ The CMA considers that for the purposes of the present case it is appropriate to assess the frame of reference for the Merger on a national basis.

Conclusion on frame of reference scope

39. For the reasons above, the CMA has used the following frames of reference for its assessment in this case:
- (a) the operation of retail pharmacies in local areas in the UK, being a circle centred on each pharmacy with a radius described in Table 1; and
 - (b) the supply of wholesale pharmaceuticals in the UK, with a particular focus on short-line wholesalers.

COMPETITIVE ASSESSMENT

Horizontal unilateral effects in the operation of retail pharmacies

40. 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.³⁹ 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 in relation to horizontal unilateral effects in the operation of retail pharmacies on a local basis.
41. In order to assess this theory of harm, the CMA has considered:

³⁵ FMN, paragraph 13.15.

³⁶ [Celesio AG / Sainsbury's Pharmacy Business \(2016\) - Final Report](#), paragraph 2.27.

³⁷ [Celesio AG / Sainsbury's Pharmacy Business \(2016\) - Final Report](#), paragraph 7.350.

³⁸ FMN, paragraph 13.12.

³⁹ [CMA129](#), paragraph 4.1.

- (a) the approach to the local assessment in *Celesio/Sainsbury's*;
- (b) the Parties' submissions;
- (c) the parameters of competition;
- (d) the appropriateness of a decision rule for the local assessment;
- (e) the appropriate thresholds for the decision rule; and
- (f) the results of the decision rule.

Approach to the local assessment in Celesio/Sainsbury's

42. In the phase 2 investigation of *Celesio/Sainsbury's*, the CMA applied a filtering approach in its local assessment of competition between retail pharmacies. The CMA found that an area should be subjected to further assessment if the area met at least one of the following two main conditions:⁴⁰

- (a) The Parties had a combined distance weighted share of stores of at least 40% following the merger, with an increment of 10% from the merger; or
- (b) The Parties were:
 - (i) either each other's geographically closest competitor; or
 - (ii) there was only one competitor closer than the other merging party and where the Parties had at least a 30% combined share of stores with an increment of 10% from the merger.

43. In *Celesio/Sainsbury's*, for those areas that failed this filter, survey case studies were used to identify local market features that are associated with high diversion ratios between the Lloyd's and Sainsbury's stores. As such, the CMA used further analysis to determine which areas that failed the filter would result in an SLC.⁴¹

Parties' submissions

44. The Parties submitted that the filter as applied in *Celesio/Sainsbury's* is an appropriate starting point for the assessment of local competitive effects in this

⁴⁰ In *Celesio/Sainsbury's*, the CMA also applied a third condition, which involved a demand estimation model based on data specific to the Parties as part of its investigation. The CMA does not consider that this condition is relevant to its current assessment of this merger, given such a condition was based on data only relevant to *Celesio/Sainsbury's*. As such, the CMA does not consider this condition further in this decision.

⁴¹ [Celesio AG / Sainsbury's Pharmacy Business \(2016\) - Final Report](#), paragraph 7.232.

present case.⁴² In particular, the Parties did not provide any evidence to suggest that there has been any material change in the competition parameters that underpinned the application of the filter in that case. Further, the Parties also confirmed that there have been no material changes in the regulation of pharmacies since 2016.⁴³

45. The Parties also submitted that if the CMA were to use a decision rule approach, as the CMA has ultimately decided to do (see paragraphs 51 to 54 of this Decision), the appropriate decision rule would be to either:⁴⁴
- (a) add a third threshold to the decision rule set out in paragraph 59, such that areas caught by the tests would be considered to give rise to an SLC unless at least 6 independent store fascia remain active within the local radius; or
 - (b) change the first of the thresholds set out in paragraph 59 such that it uses an increment of at least 10% (with the combined distance weighted share of stores remaining at least 35%), with the second threshold applying unamended.
46. The Parties submitted that if the CMA were to use the decision rule described in paragraph 59, it would be unlikely that all of the local overlaps identified would, on further examination, be considered likely to give rise to a SLC.⁴⁵ Notwithstanding this position, the Parties accepted that the Merger may result, or may be expected to result, in a SLC in the local markets identified by the decision rule set out in paragraph 59.⁴⁶

Parameters of competition

47. In *Celesio/Sainsbury's*, there were several factors that underpinned the CMA's approach to assessing local competition between retail pharmacies. In particular, the CMA considered that:
- (a) Convenience of location was the most important driver of pharmacy choice for customers.⁴⁷ There were several other drivers of choice which customers also

⁴² FMN, paragraph 15.7

⁴³ RFI 2 response, paragraph 10.1.

⁴⁴ RFI 2 response, paragraph 8.7.

⁴⁵ FMN, paragraph 15.20.

⁴⁶ FMN, paragraph 15.20.

⁴⁷ [Celesio AG / Sainsbury's Pharmacy Business \(2016\) - Final Report](#), paragraph 26.

valued, including quality and speed of service, opening hours, stocking levels and waiting times.⁴⁸

- (b) There were a range of regulations that apply to pharmacies which restrict their freedom to change elements of their price and non-price offering to customers, for example:
- (i) NHS Prescription-only Medicines, which make up the bulk of revenue for retail pharmacy businesses, are either free at the point of delivery or are charged at the fixed NHS prescription levy.⁴⁹
 - (ii) A pharmacy must open for a core number of hours (usually core hours are either 40 hours or 100 hours depending on the pharmacy's licence), it must employ a qualified pharmacist and must be licensed to operate in a given location.⁵⁰

48. As part of its assessment of this Merger, the CMA sought feedback from third party competitors to understand whether these factors continue to be relevant to how competition takes place between retail pharmacies at a local level.
49. The CMA did not receive any evidence to suggest that there has been a material change in these factors. Nearly all responses to the CMA's questionnaire indicated that these factors are still relevant when assessing how competition takes place between retail pharmacies.
50. As a result, the CMA has adopted the same factors applied in *Celesio/Sainsbury's* to its analysis of the impact of the Merger on local competition and included this in the decision rule as set out below.

Appropriateness of a decision rule for the local assessment

51. The CMA considers that the appropriate approach to identifying any local area in which the test for reference is met in this case is to apply a decision rule. The decision rule adopted in this case reflects the evidence that the CMA has gathered on how competition works and the existing competitive constraints on the Parties at a local level.

⁴⁸ [Celesio AG / Sainsbury's Pharmacy Business \(2016\) - Final Report](#), paragraph 26.

⁴⁹ [Celesio AG / Sainsbury's Pharmacy Business \(2016\) - Final Report](#), paragraph 15.

⁵⁰ [Celesio AG / Sainsbury's Pharmacy Business \(2016\) - Final Report](#), paragraph 15. The CMA notes that one third party indicated that recent legislation has been passed such that the UK allows pharmacies working 100-hours to reduce their total weekly hours to no less than 72 hours, subject to a number of requirements. The CMA does not consider this change to affect its substantive competitive analysis.

52. The CMA considers that the use of a decision rule is appropriate in the context of this case. The application of a decision rule in this case ensures that all local areas of overlap are assessed systematically by reference to the same factors, rather than having regard to different factors in different local areas, unless there is evidence that certain factors are only applicable in certain local areas (eg imminent entry or exit).⁵¹
53. The CMA considers that the application of a decision rule in this case is able to effectively reflect competitive conditions. A decision rule can take into account the relevant competitive dynamics in this case, including the location of the Parties and their competitors, and the availability of NHS Prescription-only Medicines. The CMA has not received evidence that there are competitive dynamics, either national or local, that cannot be reflected in a decision rule.
54. As such, the CMA considers that the decision rule set out below identifies those local areas which give rise to a realistic prospect of an SLC.

Appropriate thresholds for the CMA's decision rule

55. Evidence from the Parties and third parties indicates that distance and convenience of location remains the most important driver of pharmacy choice for customers. Therefore, the CMA has used the decision rule from *Celesio/Sainsbury's* as a starting point, adjusting two limbs of it in light of the specific circumstances of this case.
56. The CMA notes that the filter used in *Celesio/Sainsbury's* reflected the asymmetry between Lloyds and Sainsbury's as non-supermarket and supermarket pharmacies respectively. Specifically, in *Celesio/Sainsbury's*, the CMA found that non-supermarket pharmacies may compete more closely with each other than non-supermarket pharmacies compete with supermarket pharmacies.⁵² The CMA found, for example, that there are differences in store setting (ie with non-supermarket pharmacies often being situated on high streets with supermarket pharmacies being located in grocery stores) and shopping mission (ie a supermarket pharmacy visit is frequently combined with a supermarket groceries shop).⁵³
57. In the current case, both Well and Lexon operate non-supermarket pharmacies. The CMA therefore considers that, pre-Merger, the Parties are likely to more closely compete with one another, where both have sites present in a local area, than would

⁵¹ [CMA129](#), paragraph 4.34.

⁵² [Celesio AG / Sainsbury's Pharmacy Business \(2016\) - Final Report](#), paragraph 7.159.

⁵³ [Celesio AG / Sainsbury's Pharmacy Business \(2016\) - Final Report](#), paragraph 7.160(c).

be the case if one of the Parties were a supermarket pharmacy. On this basis, the CMA considers that it is appropriate to use lower thresholds (in relation to both the combined share and the merger increment at which concerns are considered to arise) for the purposes of the competition assessment than those used in *Celesio/Sainsbury's*.

58. The CMA does not consider it would be appropriate to take into account fascia counts in this case, as the Parties have submitted. The CMA considers that an application of a share of sites concentration measure is most appropriate in cases where brand is not very important to customer choice and where factors such as distance or convenience of location are an important driver of competition.
59. Therefore, the CMA has found an SLC wherever:
- (a) The Parties have a combined distance weighted share of stores of at least 35% following the Merger, with an increment of 5% from the Merger; or
 - (b) The Parties are:
 - (i) either each other's geographically closest competitor; or
 - (ii) there is only one competitor closer than the other merging party and where the Parties have at least a 30% combined share of stores with an increment of 5% from the Merger.

Results of the decision rule

60. Applying the above decision rule, the CMA has identified a realistic prospect of an SLC in 12 local areas in the operation of retail pharmacies at a local level, concentrated in the North East, Liverpool and Wirral areas of the UK. These areas are listed in the Annex.

Horizontal unilateral effects in the wholesale supply of pharmaceuticals

61. Both Bestway Group and Lexon are short-line wholesalers of pharmaceuticals in the UK. The CMA considers that this overlap is unlikely to raise horizontal competition concerns, as even based on a cautious approach where the Parties only compete with short-line wholesalers, they have a combined share of [10-20]%. Based on a broader approach where the Parties are constrained by both short-line and broad-line wholesalers, they have an even smaller share of supply of [0-5]%.⁵⁴

⁵⁴ FMN, Table 2 and Table 1.

Foreclosure in respect of the wholesale supply of pharmaceuticals

62. The CMA considered the Parties' vertical relationship given their respective operations in the wholesale supply of pharmaceuticals and in the operation of retail pharmacies. The CMA considers that it is not realistic that these relationships would result in input foreclosure concerns, given the Parties' small market share and corresponding lack of market power in the wholesale supply of pharmaceuticals.

BARRIERS TO ENTRY AND EXPANSION

63. 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.⁵⁵
64. In relation to the operation of retail pharmacies, the CMA found in *Celesio/Sainsbury's* that barriers to entry were high, especially in regard to regulatory barriers to entry.⁵⁶ The CMA is not aware of any evidence why barriers to entry or expansion (in terms of location) are lower today than at the time of *Celesio/Sainsbury's*. Indeed, a pharmacy cannot simply open in a local area in competition to existing pharmacies without regulatory approval based on, amongst other factors, the needs of the local community.⁵⁷ The CMA considers barriers to entry and expansion to be high and are not expected to countervail the SLCs identified.

THIRD PARTY VIEWS

65. The CMA contacted competitors of the Parties. A few competitors raised concerns that the pharmacy sector has not seen an increase in funding since 2016 which has resulted in financial stress for some pharmacies, including pharmacy closures.⁵⁸ Competitors suggested that the CMA take these pharmacy closures into account in its assessment.⁵⁹
66. Third party comments have been taken into account where appropriate in the competitive assessment above.

⁵⁵ [CMA129](#), from paragraph 8.40.

⁵⁶ [Celesio AG / Sainsbury's Pharmacy Business \(2016\) - Final Report](#), paragraphs 40 and 7.340.

⁵⁷ The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

⁵⁸ Third party responses to the CMA's questionnaire.

⁵⁹ Third party responses to the CMA's questionnaire.

CONCLUSION ON SUBSTANTIAL LESSENING OF COMPETITION

67. Based on the evidence set out above, the CMA believes that 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 operation of retail pharmacies in certain local areas in the UK, being 12 SLCs centred on the sites listed in the Annex.

DECISION

68. Consequently, the CMA believes that it is or may be the case that (i) a relevant merger situation has been created; and (iii) the creation of that situation has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
69. The CMA therefore believes that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.⁶⁰ Well has until 22 June 2023⁶¹ to offer an undertaking to the CMA.⁶² The CMA will refer the Merger for a phase 2 investigation⁶³ if Well does not offer an undertaking by this date; if Well indicates before this date that it does not wish to offer an undertaking; or if the CMA decides⁶⁴ by 29 June 2023 that there are no reasonable grounds for believing that it might accept the undertaking offered by Well, or a modified version of it.
70. The statutory four-month period mentioned in section 24 of the Act in which the CMA must reach a decision on reference in this case expires on 14 August 2023. For the avoidance of doubt, the CMA hereby gives Well notice pursuant to section 25(4) of the Act that it is extending the four-month period mentioned in section 24 of the Act. This extension comes into force on the date of receipt of this notice by Well and will end with the earliest of the following events: the giving of the undertakings concerned; the expiry of the period of 10 working days beginning with the first day after the receipt by the CMA of a notice from Well stating that it does not intend to give the undertakings; or the cancellation by the CMA of the extension.

Colin Raftery
Senior Director
Competition and Markets Authority
15 June 2023

⁶⁰ Section 22(3)(b) of the Act.

⁶¹ Section 73A(1) of the Act.

⁶² Section 73(2) of the Act.

⁶³ Sections 22(1) and 34ZA(2) of the Act.

⁶⁴ Section 73A(2) of the Act.

ANNEX – 12 SLC AREAS

| No. | Site code and name | Well / Lexon site |
|-----|-----------------------------|-------------------|
| 1 | FJ202 – Blackheath | Lexon |
| 2 | FMP31 – Stockton-on-Tees | Well |
| 3 | FN907 - Seaham | Well |
| 4 | FEM40 - Eilbeck Deneside | Lexon |
| 5 | FKG29 - Eilbeck Harbour | Lexon |
| 6 | FNG81 - Hadrian | Lexon |
| 7 | FPM20 – Pensby | Well |
| 8 | FCN12 – Irby | Lexon |
| 9 | FXF69 – Bishop Auckland | Well |
| 10 | FH490 - Newgate Street | Lexon |
| 11 | FHV08 - Escomb Road | Lexon |
| 12 | FVQ79 – Newcastle Upon Tyne | Well |