

Completed acquisition by Bestway Panacea Holdings Limited of Lexon UK Holdings Limited and Asurex Limited

Decision that undertakings might be accepted

ME/7042/23

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 20 June 2023. Full text of the decision published on 28 June 2023.

Introduction

1. On 14 April 2023, Bestway Panacea Holdings Limited (**Well**) completed the acquisition of Lexon UK Holdings Limited (**Lexon**) and Asurex Limited (**Asurex**) (the **Merger**). Well, Lexon and Asurex are together referred to as the **Parties**.
2. On 15 June 2023, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to the Parties of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 22(3)(b) on the date of the SLC Decision in order to allow Well the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.
4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 15 June 2023, Well offered undertakings to the CMA for the purposes of section 73(2) of the Act.
5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to Well that it considers that there are reasonable grounds for believing that the undertakings

offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
7. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in relation to the operation of retail pharmacies in 12 local areas in the UK (**SLC areas**).
8. To address the competition concerns set out in the SLC Decision, Well has offered undertakings in lieu of a reference (the **Proposed Undertakings**). It has offered to divest its own pharmacy stores in each of the SLC areas (**the Divestment Pharmacies**). Given there is some overlap between the SLC areas centred on Well pharmacies and the SLC areas centred on Lexon pharmacies, Well submitted that the divestment of 7 specific Well pharmacy stores would achieve a clear solution to the 12 SLCs identified in the SLC Decision. The Divestment Pharmacies include the NHS contract to practice (subject to General Pharmaceutical Council agreement and NHS change of ownership approval), the relevant lease, staff, stock, patient data and all direct customers.
9. The SLC areas and sites currently offered by Well are listed in Annex 1.
10. Under the Proposed Undertakings, Well also offered to enter into a purchase agreement with a buyer or buyers approved by the CMA before the CMA finally accepts the Proposed Undertakings (**Upfront Buyer Condition**).

The CMA's provisional views

11. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.¹
12. The CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA, given that they would result in a clear-cut divestment of the entire horizontal overlap in relation to the operation of retail pharmacies in the SLC areas. As such, the

¹ [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

Proposed Undertakings may result in replacing the competitive constraint provided by Lexon that would otherwise be lost following the Merger.

13. The CMA currently believes that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also believes at this stage that the Proposed Undertakings may be capable of ready implementation, in particular given the Divestment Pharmacies are stand-alone businesses that are capable of being sold and the Parties have provided evidence that there are potential purchasers for each of the Divestment Pharmacies.
14. The Upfront Buyer Condition means that the CMA will only accept the Proposed Undertakings after Well has entered into an agreement with a nominated buyer(s) that the CMA considers to be suitable. It also means that, before acceptance, the CMA will consult publicly on the suitability of the nominated buyer(s), as well as other aspects of the Proposed Undertakings. The CMA notes that an Upfront Buyer Condition is necessary in this case because of evidence received that indicates that the pool of potential purchasers may be limited.²
15. For these reasons, the CMA currently thinks that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.
16. The CMA's decision on whether ultimately to accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among other things, third-party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA. In particular, before ultimately accepting the Proposed Undertakings, the CMA must be confident that the nominated buyers are effective and credible such that the competitive constraint provided by Lexon absent the Merger is replaced to a sufficient extent.

Consultation process

17. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.³

² See [CMA 87](#) paragraphs 5.28–5.32.

³ [CMA2](#), paragraph 8.29.

Decision

18. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by Well, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 24 August 2023 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 20 October 2023 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

Colin Raftery
Senior Director
Competition and Markets Authority
20 June 2023

Annex 1 – SLC areas

No.	Site code and name	Well / Lexon site	Proposed divestments
1	FJ202 – Blackheath	Lexon	FG244 - Well Moreton - Pasture Road HC
2	FMP31 – Stockton-on-Tees	Well	FMP31 – Well Stockton-on-Tees
3	FN907 – Seaham – Church Street	Well	FN907 - Well Seaham - Church Street
4	FEM40 - Eilbeck Deneside	Lexon	
5	FKG29 - Eilbeck Harbour	Lexon	
6	FNG81 - Hadrian	Lexon	FNK57 - Well High Howdon - Windsor Drive
7	FPM20 - Pensby Road	Well	FPM20 - Well Pensby - Pensby Road
8	FCN12 – Irby	Lexon	
9	FXF69 - Bishop Auckland – Newgate Centre	Well	FXF69 - Well Bishop Auckland - Newgate Centre
10	FH490 - Newgate Street	Lexon	
11	FHV08 - Escomb Road	Lexon	
12	FVQ79 – Kenton – 29 Arlington Avenue	Well	FVQ79 – Well Kenton – 29 Arlington Avenue