

# Completed acquisition by Pharmacy2U of Lloyds Direct

## Decision on relevant merger situation and substantial lessening of competition

**ME/7078/23**

The Competition and Markets Authority’s decision on relevant merger situation and substantial lessening of competition under section 22(1) of the Enterprise Act 2002 given on 12 March 2024. Full text of the decision published on 19 April 2024.

The Competition and Markets Authority (**CMA**) has excluded from this published version of the decision information which the CMA considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [§]. Some numbers have been replaced by a range, which are shown in square brackets.

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# SUMMARY

## OVERVIEW OF THE CMA'S DECISION

1. The Competition and Markets Authority (**CMA**) has found that the acquisition by Pharmacy2U Limited (**Pharmacy2U**) of Metabolic Healthcare Limited (trading as **Lloyds Direct**), is a relevant merger situation that does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
2. On 5 October 2023, Pharmacy2U acquired Lloyds Direct. The CMA refers to this acquisition as the **Merger**. Pharmacy2U and Lloyds Direct are together referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.

### Who are the businesses and what products/services do they provide?

3. Pharmacy2U and Lloyds Direct are distance selling pharmacies (**DSPs**), ie they operate exclusively at a distance from customers. DSPs include mail order and internet pharmacies that remotely manage customers' medicine logistics and distribution. They are both active in the supply of prescription-only medicines (**POMs**) in England. Pharmacy2U also provides a range of healthcare services, runs an online doctor consultation service and sells a range of health and wellbeing products.

### Why did the CMA review this merger?

4. The CMA's primary duty is to seek to promote competition for the benefit of consumers. It has a duty to investigate mergers that could raise competition concerns in the UK, provided it has jurisdiction to do so. In this case, the CMA has concluded that the CMA has jurisdiction to review this Merger because:
  - (a) a relevant merger situation has been created as each of Pharmacy2U and Lloyds Direct are enterprises that have ceased to be distinct as a result of the Merger; and
  - (b) the turnover test is met.

### What evidence has the CMA looked at?

5. In assessing this Merger, the CMA considered a wide range of evidence in the round.
6. The CMA received several submissions and responses to information requests from the Parties. The CMA also examined the Parties' internal documents, which

indicate that each Party viewed the other as a close competitor. The CMA also considers that the Parties' internal documents recognise competitive constraint from brick-and-mortar pharmacies.

7. The CMA spoke to and gathered evidence from other companies and organisations to better understand the competitive landscape and obtain their views on the impact of the Merger, in particular the constraint posed by brick-and-mortar pharmacies on DSPs.

## **What did the evidence tell the CMA about the effects on competition of the Merger**

8. The CMA looked at whether the Merger would lead to a substantial lessening in competition as a result of horizontal unilateral effects in the supply of ordering, dispensing and delivery of POMs in England.
9. The Parties are the two largest DSPs in England. The Parties' shares and internal documents, as well as third-party evidence, indicate that the Parties are close competitors. However, evidence received by the CMA also indicates that the Parties are constrained by other DSPs and brick-and-mortar pharmacies.
  - (a) Switching data and third-party evidence indicate that many customers view visiting brick-and-mortar pharmacies as substitutable to obtaining POMs from a DSP. Brick-and-mortar pharmacies dispense the vast majority of POMs in England. Furthermore, many brick-and-mortar pharmacies offer home delivery options, including some larger chains that offer national delivery.
  - (b) Official figures and share data indicate that there are around 400 other DSPs in England. These DSPs offer a similar service to, and compete against, the Parties. Although these DSPs are individually smaller than the Parties in terms of their current volumes of dispensed POMs, combined they account for more than half of the POMs dispensed by DSPs in England.

## **What happens next?**

10. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

# ASSESSMENT

## 1. PARTIES, MERGER AND MERGER RATIONALE

11. Pharmacy2U is a DSP and supplies POMs in England. Pharmacy2U also provides other healthcare services, runs an online doctor consultation service and sells a range of health and wellbeing products.<sup>1</sup>
12. Lloyds Direct is also a DSP and supplies POMs in England.<sup>2</sup> Lloyds Direct was the DSP business of Lloyds Pharmacy. Aurelius Asset Management Group acquired the Lloyds Pharmacy business in April 2022 and has since sold all brick-and-mortar pharmacies and commenced liquidation proceedings. The turnover of Lloyds Direct in the financial year (FY2022) was approximately £92.7 million in the UK.<sup>3</sup>
13. On 5 October 2023, Pharmacy2U acquired the entire share capital of Lloyds Direct.<sup>4</sup>
14. The Parties submitted that the strategic rationale for the Merger is to put the Lloyds Direct business on a path to sustainability; to enable the Merged Entity to benefit from economies of scale and efficiencies (including hub and spoke dispensing, efficient facility utilisation and better drug procurement terms); and to allow the Merged Entity to benefit from improved marketing and customer acquisition costs.<sup>5</sup>

## 2. PROCEDURE

15. The CMA's mergers intelligence function identified the Merger as warranting an investigation.<sup>6</sup>
16. The CMA commenced its phase 1 investigation on 23 January 2024. As part of its phase 1 investigation, the CMA gathered a significant volume of evidence from the Parties. In response to targeted information requests, the CMA received and reviewed internal documents from Pharmacy2U and Lloyds Direct to understand how closely they compete with each other and the alternative constraints they

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<sup>1</sup> Parties' response to s109 notice dated 6 November 2023, paragraphs 13.7 and 13.11. These other healthcare services constitute around [5-10]% of Pharmacy2U's revenues. Given that Lloyds Direct mainly supplies POMs and has limited other healthcare services, the CMA's decision has focused on where the Parties predominantly overlap (ie the supply of POMs).

<sup>2</sup> Parties' response to s109 notice dated 6 November 2023, paragraph 13.10.

<sup>3</sup> Parties' response to s109 notice dated 6 November 2023, paragraph 10.1.

<sup>4</sup> Parties' response to s109 notice dated 6 November 2023, paragraphs 4.1 and 5.1, and Annex 002 s109N1.

<sup>5</sup> Parties' response to s109 notice dated 6 November 2023, paragraphs 23.2 and 23.3, and Executive Summary, paragraphs 4-6.

<sup>6</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), January 2021 (as amended on 4 January 2022), paragraphs 6.4-6.6.

face. The evidence the CMA has gathered has been tested rigorously, and the context in which the evidence was produced has been considered when deciding how much weight to give it.

17. Where necessary, this evidence has been referred to within this Decision.

### 3. JURISDICTION

18. Each of Pharmacy2U and Lloyds Direct is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.
19. The UK turnover of Lloyds Direct exceeds £70 million in its most recently completed financial year (FY2022),<sup>7</sup> so the turnover test in section 23(1)(b) of the Act is satisfied.
20. The Merger completed, and was made public, on 5 October 2023. The four-month deadline for a decision under section 24 of the Act is 28 March 2024, following extensions under section 25(1) and section 25(2) of the Act.
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 started on 24 January 2024 and the statutory 40 working day deadline for a decision is therefore 19 March 2024.

### 4. COUNTERFACTUAL

23. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).<sup>8</sup>
24. In completed mergers, the counterfactual may consist of the pre-merger conditions of competition, or conditions of competition that involve stronger or weaker competition between the parties to a merger than under the pre-merger conditions of competition.<sup>9</sup> Where there are multiple potential counterfactual scenarios, the CMA will choose the scenario where the merging firms exert the strongest competitive constraint on each other.<sup>10</sup> The CMA will generally focus on potential changes to the pre-merger conditions of competition only where there are reasons to believe that those changes would make a material difference to its competitive assessment.<sup>11</sup>

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<sup>7</sup> Parties' response to s109 notice dated 6 November 2023, paragraph 10.1.

<sup>8</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.1.

<sup>9</sup> [CMA129](#), paragraph 3.2.

<sup>10</sup> [CMA129](#), paragraph 3.12.

<sup>11</sup> [CMA129](#), paragraph 3.9.

25. The Parties submitted that the counterfactual should account for the possibility that, if no credible bidder had been found, Lloyds Direct would have probably been closed down.<sup>12</sup> However, the Parties did not submit that the CMA should assess Lloyds Direct as an exiting firm in accordance with the CMA's Merger Assessment Guidelines.<sup>13</sup> The CMA did not receive evidence to indicate that it is inevitable that Lloyds Direct would have exited in the foreseeable future.
26. The CMA received evidence from third parties which indicates that, absent the Merger, Lloyds Direct may have been retained by its previous owners or sold to an alternative purchaser.<sup>14</sup> The CMA does not consider it necessary to select the particular scenario that leads to the counterfactual, because it would not make a material difference to its finding on the counterfactual or competitive assessment. The CMA believes that, given the dynamics of competition in this industry and the potential alternative purchasers, both scenarios lead broadly to the same conditions of competition.
27. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

## **5. COMPETITIVE ASSESSMENT**

### **5.1 Background and nature of competition**

#### **5.1.1 Types of pharmacies**

28. The Parties overlap in the supply of ordering, dispensing and delivery of NHS England POMs. POMs are pharmaceutical drugs that require a prescription and are dispensed by a pharmacist. Prescription charges for POMs are fixed and decided by the NHS.
29. Customers can nominate a pharmacy that will receive their prescriptions. The nominated pharmacy receives prescriptions from the customers' GP (via the Electronic Prescription Service in England). The nominated pharmacy will then dispense (including, where available or necessary, deliver) the POMs. Nominations are stored on the NHS system (known as the NHS Spine) until the customer changes or removes their nomination.<sup>15</sup> Customers can switch their nomination to any pharmacy of any type, ie there is no separate nomination procedure for DSPs.

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<sup>12</sup> Parties' response to s109 notice dated 6 November 2023, paragraphs 20.1 and 20.2.

<sup>13</sup> [CMA129](#), paragraphs 3.21–3.32.

<sup>14</sup> [redacted].

<sup>15</sup> Furthermore, where customers do not want a particular prescription to go to their nominated pharmacy, GPs can choose a one-off nomination to a brick-and-mortar pharmacy at the customer's request or can issue a non-nominated prescription that the customer can take to the pharmacy of their choice.

30. The Parties both operate as DSPs. Legislation requires that DSPs must deliver POMs free of charge and dispense POMs across England (as above, prescription charges are fixed by the NHS).<sup>16</sup> DSPs typically send POMs to customers through the postal system. There are around 400 DSPs operating in England. DSPs may be standalone businesses, like the Parties, or be connected to a brick-and-mortar pharmacy or chain of pharmacies. The market for DSPs is highly fragmented with vast majority of DSPs only dispensing a small number of POMs. In total, DSPs currently dispense around [5-10]% of POMs in England.<sup>17</sup> Evidence that the CMA received during its investigation indicates that brick-and-mortar pharmacies will continue to dispense the majority of POMs; third parties, including competitors of the Parties and public sector bodies, do not anticipate a substantial increase in demand for DSPs or online delivery of POMs in England in the near future.<sup>18</sup>
31. Brick-and-mortar pharmacies dispense the majority of POMs in England. There are currently over 10,000 brick-and-mortar pharmacies in England.<sup>19</sup> This includes national branded pharmacies, such as Boots, Well and Rowlands; pharmacies in supermarkets like Asda and Tesco; as well as smaller regional chains and independent pharmacies. Community Pharmacy England statistics indicate that 89% of the population of England has access to a community pharmacy within a 20-minute walk.<sup>20</sup> Brick-and-mortar pharmacies dispense directly to customers in store. Many brick-and-mortar pharmacies also offer delivery options and (if not a DSP) are able to charge for delivery; free delivery is typically only offered to vulnerable customers that are unable to attend the pharmacy in person. In addition, these delivery options are often only available in the local area around the pharmacy, rather than being available nationally.<sup>21</sup>

### 5.1.2 Nature of competition

32. Price is not a relevant parameter of competition in the supply of POMs by DSPs, as prescription prices are set and regulated by NHS England.<sup>22</sup> Instead, pharmacies compete on a range of non-price parameters. Third parties identified convenience and quality of service as important factors that drive customer choice of pharmacy.<sup>23</sup> These are subjective notions and differ between customers, but broadly encompass customers receiving POMs in manner that is convenient to them (eg by delivery or directly from a pharmacist in a brick-and-mortar pharmacy)

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<sup>16</sup> The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. For example, see section 64(3) for conditions relating to the operation of a DSP.

<sup>17</sup> CMA calculation based on data received from Department of Health and Social Care.

<sup>18</sup> Responses to CMA questionnaire by third parties, February 2024, question 9. Note of a call with a third party, January 2024, paragraphs 18 and 19. Submission to the CMA from a third party, January 2024.

<sup>19</sup> Note of a call with a third party, January 2024, paragraph 13.

<sup>20</sup> [Community Pharmacy England statistics](#) (accessed on 12 March 2024) .

<sup>21</sup> Note of call with a third party, January 2023, paragraphs 11-12; and note of call with a third party, December 2023, paragraph 5.

<sup>22</sup> DSPs must offer free delivery of POMs to customers. Other pharmacies may charge for (all) delivery options.

<sup>23</sup> Note of a call with a third party, January 2024, paragraph 12; and note of a call with a third party, January 2024, paragraph 16.

and the pharmacy having the required POMs available for dispensing when needed by the customer.

33. Some third parties raised concerns that the Merger may have wider implications for pharmacies and customers beyond impacting competition, in particular the large volumes of POMs that would be dispensed by the Merged Entity (when compared to other DSPS and, more generally, pharmacies). For example, third parties were concerned that there could be widespread disruption to a large number of customers if the Merged Entity's systems failed, or that the Merged Entity would receive a larger share of the NHS's set budget for prescriptions, which would lead to less funding for smaller pharmacies. Some third parties also raised concerns about the Parties' past behaviour, especially in relation to advertising and quality of service. In exercising its merger control function, the CMA's primary duty is to assess whether a merger results in a substantial lessening of competition. However, the CMA has taken into account these more general comments on the Parties, DSPs and the Merger's impact on the pharmacy industry where appropriate in its competitive assessment.

## **5.2 Market definition**

### **5.2.1 Product market**

34. The Parties overlap in the supply of ordering, dispensing and delivery of NHS England POMs.
35. The relevant product market is identified primarily by reference to demand-side substitution.<sup>24</sup> However, there are circumstances where the CMA may aggregate several narrow relevant markets into one broader market based on considerations about the response of suppliers to changes in prices.<sup>25</sup>

#### *5.2.1.1 Parties' submissions*

36. The Parties submitted that the relevant product market was the provision of pharmacy services (ie dispensing and delivering) for POMs by all community pharmacists.<sup>26</sup>
37. The Parties submitted that, from a demand-side perspective, all pharmacies were interchangeable. The Parties explained that, owing to NHS regulation, prescription charges (ie the price paid by customers for POMs) were the same as between the different types of pharmacies, and that customers used the same nomination process when selecting their pharmacy of choice. The Parties submitted that some

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<sup>24</sup> [CMA129](#), paragraph 9.7.

<sup>25</sup> [CMA129](#), paragraph 9.8.

<sup>26</sup> Parties' response to s109 notice dated 6 November 2023, paragraph 13.22.



brick-and-mortar pharmacies offered delivery of POMs in a manner similar to DSPs. More generally, the Parties submitted that there was significant competitive interaction between DSPs and brick-and-mortar pharmacies.<sup>27</sup> The Parties submitted that from a supply-side perspective, all pharmacies were subject to the same regulatory framework and provided essentially the same service, specifically enabling customers to access their POMs.

38. As discussed further in the competitive assessment and in Table 3 below, the Parties submitted switching data which showed that when customers change their nomination from Pharmacy2U or Lloyds Direct, only a small proportion switch to the other Party.<sup>28</sup> The Parties submitted that the vast majority of customers who changed nomination from Pharmacy2U switched to brick-and-mortar pharmacies, and vice versa. The Parties submitted this showed that DSPs competed strongly with brick-and-mortar pharmacies.

#### 5.2.1.2 *Third-party evidence*

39. Some third parties told the CMA that certain customer groups relied on DSPs to deliver their POMs because they were not able to collect their POMs from a brick-and-mortar pharmacy during opening hours. This group may include housebound or vulnerable customers (although brick-and-mortar pharmacies typically provide free delivery to vulnerable customers); customers that face long or difficult journeys to their local pharmacy; or customers whose lifestyle or working pattern makes it difficult for them to attend a pharmacy in person to collect their POMs.
40. In support of a wider market definition, almost all of the third parties consulted considered that brick-and-mortar pharmacies were a suitable alternative to DSPs.<sup>29</sup> However, delivery from brick-and-mortar pharmacies is usually undertaken by pharmacy staff or courier and, therefore, is typically limited to the local area around the pharmacy. Delivery from brick-and-mortar pharmacies may also only be available on specific days, limited time slots or an ad hoc basis.<sup>30</sup> In contrast, deliveries from DSPs are made through the post and are made across England.

#### 5.2.1.3 *CMA's assessment*

41. The CMA considered whether it would be appropriate to define the product market with a focus on the delivery of POMs (and, if appropriate, delineating between: (i) delivery by DSPs only and (ii) delivery by both DSPs and brick-and-mortar

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<sup>27</sup> Parties' response to s109 notice dated 6 November 2023, paragraphs 13.19-13.22.

<sup>28</sup> Parties' response to s109 notice dated 27 November 2023, page 33-35.

<sup>29</sup> Responses to CMA questionnaire by third parties, February 2024, question 6 and 8.

<sup>30</sup> Responses to CMA questionnaire by third parties, February 2024, question 3. Note of a call with a third-party, January 2024, paragraph 12.

pharmacies); or, to define a wider product market comprising both the delivery of POMs and collection of POMs from brick-and-mortar pharmacies.

42. In support of a market for supply of POMs by DSPs only, the CMA received evidence that there may be customers that rely on, and value the free, national delivery options provided from DSPs. In addition, delivery options from brick-and-mortar pharmacies are typically restricted to a particular geographic area or to specific time slots. Brick-and-mortar pharmacies may also charge for delivery, although they typically do not charge for delivery to vulnerable customers. However, the CMA notes that the availability of delivery from brick-and-mortar pharmacies, including the evidence from third parties that many customers view DSPs and brick-and-mortar pharmacies as substitutes, would support a wider product market definition comprising at least the delivery of POMs by both DSPs and brick-and-mortar pharmacies.
43. The CMA considers that there is also evidence in support of an even wider product market definition encompassing the delivery of POMs by both DSPs and brick-and-mortar pharmacies, as well as the collection of POMs from brick-and-mortar pharmacies. The CMA notes that, from the demand-side perspective, there appears to be a degree of interchangeability between DSPs and brick-and-mortar pharmacies. This is demonstrated by the Parties' switching data, which shows that the vast majority of customers that switched from Pharmacy2U appear to move their nomination to a brick-and-mortar pharmacy. Third parties supported the view that customers transfer their nominations between DSPs and brick-and-mortar pharmacies. The CMA also notes that the nomination process is the same for both DSPs and brick-and-mortar pharmacies and that the NHS fixes prescription charges, meaning that prescription charges do not differ between pharmacies.
44. The evidence above indicates that the market could be broader than the supply of delivered POMs by DSPs. However, the exact definition of the relevant product market can be left open as the CMA has found that the Merger does not give rise to a realistic prospect of an SLC on any basis.

### **5.2.2 Geographic market**

45. By the terms of their licenses, DSPs are required to dispense POMs to any customer registered with an NHS GP in England. For this reason, the Parties have submitted that a local market definition would not be appropriate for DSPs. The Parties have provided evidence to indicate that their customers are located across England.<sup>31</sup>

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<sup>31</sup> Parties' response to s109 notice dated 6 November 2023, paragraph 19.1-19.6.

46. Based on the evidence above, the CMA has considered that the relevant geographic market is England.

### **5.3 Horizontal unilateral effects in the supply of POMs**

47. In its investigation of this Merger, the CMA considered whether the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of POMs in England.

48. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity to, for example, profitably raise prices or to degrade quality on its own and without needing to coordinate with its rivals.<sup>32</sup> Horizontal unilateral effects are more likely when the parties to a merger are close competitors.<sup>33</sup>

49. 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 the supply of POMs in England. The CMA considered evidence from the Parties (including submissions, internal documents and sales data), as well as evidence from competitors and public sector bodies. In particular, the CMA assessed:

- (a) shares;
- (b) the Parties' switching data;
- (c) the Parties' internal documents; and
- (d) third-party evidence.

#### **5.3.1 Shares**

50. Shares can be useful evidence when assessing closeness of competition, particularly when there is persuasive evidence as to which potential substitutes should be included or excluded or when the degree of differentiation between firms is more limited. In such circumstances, a firm with a higher share is more likely to be a close competitor to its rivals.<sup>34</sup>

##### *5.3.1.1 Evidential value of shares*

51. In the course of its investigation, the CMA received two different share estimates based on the number of POMs dispensed in England.

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<sup>32</sup> [CMA129](#), paragraph 4.1.

<sup>33</sup> [CMA129](#), paragraph 4.8.

<sup>34</sup> [CMA129](#), paragraph 4.14.

- (a) DHSC provided the POMs dispensed by DSPs only for the period 1 January 2023 – 30 June 2023.<sup>35</sup>
- (b) The Parties submitted shares on the basis of all POMs dispensed in England in July 2023 by all pharmacies (ie DSPs and brick-and-mortar pharmacies).<sup>36</sup> The Parties estimated these shares using publicly available data.

52. The CMA considers both shares estimates provide useful information for the competition assessment. The DSP-only shares indicate the relative strength of different DSPs, whilst the Parties' share estimates offer useful insights on the wider competitive conditions that would be faced by the Merged Entity post-Merger.
53. The CMA considers that the number of POMs dispensed is an appropriate metric to measure shares. As discussed in paragraph 28, prescription charges are fixed by the NHS and, consequently, the total number of POMs dispensed will correlate exactly with revenues. The same approach to shares was used in Celesio/Sainsbury's.<sup>37</sup>

### 5.3.1.2 Shares

54. Table 1 and Table 2 below present the share estimates for DSPs only and for the wider pharmacies market respectively.

**Table 1: Shares for POMs dispensed in England by DSPs, 1 January 2023 – 30 June 2023**

<i>Pharmacy</i>	<i>Number of NHS prescribed items dispensed ('000)</i>	<i>Share %</i>
Pharmacy2U Ltd	8,772	[20-30]
Lloyds Direct	6,285	[10-20]
<i>Combined</i>	<i>15,057</i>	<i>[40-50]</i>
Bestway National Chemists Ltd (Well)	735	[0-5]
PillTime	437	[0-5]
Chemist4U	434	[0-5]
Weldricks Pharmacy	376	[0-5]
Remedi Solutions Ltd	315	[0-5]
Rowlands Pharmacy	243	[0-5]
Pharmalogic	216	[0-5]
Care Quality Pharmacy	212	[0-5]
Other (up to 384 other suppliers)	[<]	[40-50]
Total	[>]	100%

Source: Department of Health and Social Care, December 2023. Shares calculated by the CMA.

55. Table 1 shows that, pre-Merger, the Parties were the two largest DSPs in England and were substantially larger than their next nearest competitors. The Parties'

<sup>35</sup> The CMA also received share estimates for the year 2022 and found that these were only marginally different to those for 1 January 2023 – 30 June 2023.

<sup>36</sup> The CMA also received share estimates from DHSC for the Parties as a percentage of all POMs dispensed in England by all pharmacies over the period 1 January 2023 – 30 June 2023. These were only marginally different to the shares provided by the Parties for July 2023. Subsequently, the CMA considers using shares for one month is appropriate in its analysis. Parties' response to s109 notice dated 6 November 2023.

<sup>37</sup> [Anticipated acquisition by Celesio AG of Sainsbury's Supermarkets Limited UK Pharmacy Business \(Celesio/Sainsbury's\)](#).

combined share was [40-50]%, incorporating an increment of [10-20]%. All other suppliers' shares were below [0-5]%.

56. The DSP-only shares also demonstrate that there are many – significantly smaller – DSPs active in the market that supply over half of DSPs delivered prescriptions.

**Table 2: Parties' calculations of shares for POMs dispensed in England, July 2023**

<i>Pharmacy</i>	<i>Number of NHS prescribed items dispensed ('000)</i>	<i>Share %</i>
Pharmacy2U Ltd	1,522	[0-5]
Lloyds Direct	1,077	[0-5]
<i>Combined</i>	<i>2,599</i>	<i>[0-5]</i>
Boots UK Ltd	12,300	[10-15]
Bestway National Chemists Ltd	4,349	[0-5]
Lloyds Pharmacy Ltd	2,539	[0-5]
Tesco Stores Ltd	2,352	[0-5]
L Rowland & Co	2,238	[0-5]
Day Lewis Plc	2,054	[0-5]
Gorgemead Ltd	2,023	[0-5]
Asda Stores Ltd	1,472	[0-5]
Other (up to 10,184 other suppliers)	[>]	[60-70]
Total	[>]	100%

Source: Parties' response to s109 notice dated 27 November 2023, page 36-37.

\*The CMA notes that on 23 November 2023, Hallo Healthcare Group (the owner of Lloyds Pharmacy) announced it had sold all of the branches of Lloyds Pharmacy that Hallo Healthcare operated. Hallo Healthcare also announced that 99% of these branches would remain open under new ownership. Due to the small overall market shares involved the CMA does not consider this to make a difference to the analysis of the shares.

57. Table 2 shows that the total market for dispensation of POMs in England is highly fragmented. The Parties' combined share of [0-5]% is small. Pre-Merger, Pharmacy2U and Lloyds Direct were the eighth and eleventh largest suppliers respectively. The largest supplier (Boots) has only [10-20]% of the market and no other supplier has more than [0-5]%. The majority of prescriptions were, in aggregate, dispensed by small independents.
58. The CMA also consulted large brick-and-mortar pharmacy chains on the number of POMs delivered for the period 1 January 2023 to 30 June 2023.<sup>38</sup> The response indicated that at least two brick-and-mortar pharmacy chains delivered comparable numbers of POMs to the Parties, and that the Parties combined share of delivered POMs was no more than [30-40]%. Due to the incomplete third-party response, this is likely to significantly overstate the Parties' share of delivered POMs.

### 5.3.1.3 Conclusion on shares

59. The evidence above indicates that Pharmacy2U and Lloyds Direct are the two largest DSPs and that no other DSPs have a share over [0-5]%. The CMA considers that these shares indicate the Parties compete closely. The shares analysis shows that there are also many smaller, alternative DSPs active in the market. Whilst individually these DSPs win only a small number of nominations

<sup>38</sup> Responses to CMA questionnaire by third parties, February 2024, question 3.

relative to the Parties, in aggregate, they account for over half of the prescriptions dispensed by DSPs demonstrating that other DSPs have been successful in winning nominations.

60. In the context of the POMs dispensed by all pharmacies, the shares analysis shows that DSPs only make up a small proportion of total POMs dispensed in England, with the vast majority being dispensed by brick-and-mortar pharmacies. The total pharmacy market is very fragmented with a large number of competitors with small market shares. The Merged Entity would only have a small share.

### 5.3.2 Switching data

61. Pharmacy2U provided switching data for the 13-month period from October 2022 to November 2023 (presented in Table 3 below). This switching data detailed where nominations that were won by Pharmacy2U came from, and where nominations that were lost by Pharmacy2U went to.<sup>39</sup>
62. Pharmacy2U explained that this data was collected in the ordinary course of business as a result of querying the NHS database via the NHS Spine portal when a customer requests their medicine from Pharmacy2U.<sup>40</sup> Similarly, Pharmacy2U regularly query the NHS database for details of existing customers, and in this way receive information of where any customers that leave Pharmacy2U have moved their nomination to.<sup>41</sup>
63. Table 3 presents the switching data submitted by the Parties for the 13-month period to November 2023.

**Table 3: Nominations lost and won by Pharmacy2U in the 13-month period to November 2023**

Pharmacy	Pharmacy2U nominations lost		Pharmacy2U nominations gained		Net change Number ('000)
	Number ('000)	Share (%)	Number ('000)	Share (%)	
Independents	[<]	[40-50]%	[<]	[40-50]%	[<]
Boots UK Ltd	[<]	[10-15]%	[<]	[10-20]%	[<]
Lloyds Pharmacy Ltd	[<]	[5-10]%	[<]	[5-10]%	[<]
Bestway National Chemists Ltd (Well Pharmacy)	[<]	[5-10]%	[<]	[5-10]%	[<]
Tesco Stores Ltd	[<]	[0-5]%	[<]	[0-5]%	[<]
Lloyds Direct	[<]	[0-5]%	[<]	[0-5]%	[<]
L Rowland & Co Ltd	[<]	[0-5]%	[<]	[0-5]%	[<]
Day Lewis Plc	[<]	[0-5]%	[<]	[0-5]%	[<]
Asda Stores Ltd	[<]	[0-5]%	[<]	[0-5]%	[<]
Innox Trading Ltd (Chemist 4 U)	[<]	[0-5]%	[<]	[0-5]%	[<]
Total	[<]	-	[<]	-	[<]

Source: Parties' response to s109 dated 27 November 2023, page 34.

<sup>39</sup> Parties' response to s109 notice dated 27 November 2023, page 33-35.

<sup>40</sup> Parties' response to s109 notice dated 14 December 2023, page 13.

<sup>41</sup> Parties' response to CMA's request for information dated 12 January 2023, page 2.

64. Table 3 shows that only a small proportion ([0-5]%) of Pharmacy2U's nominations that it lost went to Lloyds Direct. The majority of Pharmacy2U's lost nominations were transferred to brick-and-mortar pharmacies such as Boots, Bestway, and Tesco. The proportion of customers transferring their nomination to Lloyds Direct ([0-5]%) was substantially lower than the proportion that would have been expected to transfer to Lloyds Direct if DSP customers had only considered other DSPs as credible alternatives.<sup>42</sup> Similarly, when considering the transfer of nominations won by Pharmacy2U from other pharmacies: Pharmacy2U won only a small proportion ([0-5]%) of its nominations from Lloyds Direct and the remaining vast majority ([90-100]%) of nominations from brick-and-mortar pharmacies and other DSPs.

#### 5.3.2.1 Conclusion on switching data

65. The switching data provides strong evidence that customers considered brick-and-mortar pharmacies as an alternative to DSPs, as the majority of customers that left Pharmacy2U went to brick-and-mortar pharmacies. Similarly, most of the customers that Pharmacy2U won also came from brick-and-mortar pharmacies. Overall, the CMA considers that this evidence shows that the Parties and brick-and-mortar pharmacies compete with each other for customer nominations.

#### 5.3.3 Internal documents

66. The CMA reviewed the Parties' internal documents to assess whether they viewed each other as competitors and which other competitors they monitored.

67. A large number of the Parties' internal documents indicated that they monitored each other consistently and viewed each other as their closest competitor. For example:

- (a) A document produced by Lazard for the Pharmacy2U board evaluating the Merger stated that a key attraction of the Merger was that it would [redacted].<sup>43</sup>
- (b) The information memorandum produced for the Merger described the online segment of the NHS England prescription market as being [redacted].<sup>44</sup>
- (c) A board document from June 2022 commenting on awareness amongst the public stated that [redacted].<sup>45</sup>

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<sup>42</sup> If customers did not consider brick-and-mortar pharmacies substitutes, following DSP-only shares, Lloyds Direct would be expected to win [20-30]% of customers that move their nomination from Pharmacy2U.

<sup>43</sup> Parties' response to s109 notice dated 6 November 2023, Annex 38, slide 2.

<sup>44</sup> Parties' response to s109 notice dated 6 November 2023, Annex 40, slide 7.

<sup>45</sup> Parties response to s109 notice dated 6 November 2023, Annex 111, slide 24.

- (d) A series of documents produced for weekly Pharmacy2U management team meetings often included slides that tracked Pharmacy2U's position against [X].<sup>46</sup>
68. The Parties submitted that some of these references were not evidence of Pharmacy2U competing with Lloyds Direct directly for the dispensation of POMs but were because Pharmacy2U competed with Lloyds Direct for strategic investment from future investors.<sup>47</sup>
69. There is limited evidence in internal documents that they compete strongly with other DSPs. For example, in the board presentations produced for Pharmacy2U's regular board meetings, [X] was the only other DSP (aside from [X]) that was consistently monitored.<sup>48</sup> Moreover, these slides only focused on the online market and did not include an assessment of offline competitors.
70. Other documents, however, showed the Parties monitored the wider pharmacy market and compared their performance against large brick-and-mortar pharmacy chains. For example:
- (a) Some market research and advertising studies, produced by the internal Pharmacy2U marketing team and presented to the board, look at [X]. This shows that the Parties are interested in their brand perception compared to brick-and-mortar pharmacies.<sup>49</sup>
  - (b) Pharmacy2U competitor monitoring scoreboards produced monthly for the P2U management team set out the [X]. This suggests that Pharmacy2U monitors itself against brick-and-mortar pharmacies.<sup>50</sup>
  - (c) A CEO update for the Pharmacy2U management team noted that [X].<sup>51</sup> This indicates that Pharmacy2U target customers that use brick-and-mortar pharmacies and respond to changes in supply from these pharmacies.
  - (d) The Lloyds Direct managing director led a brand strategy review to evaluate the relative strength of the Lloyds brand compared to other pharmacies. It was presented to the Hallo Healthcare Group executive chairman and shows that [X]. [X], implying most customers tend to be brand-agnostic when it comes to their choice of pharmacy and do not purely prefer either brick-and-mortar pharmacies or DSPs.<sup>52</sup>

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<sup>46</sup> Parties response to s109 notice dated 6 November 2023, Annex 75, slide 14; Annex 79, slide 6.

<sup>47</sup> Parties' response to s109 notice dated 6 November 2023, page 21.

<sup>48</sup> Parties' response to s109 notice dated 6 November 2023, Annexes 104-123.

<sup>49</sup> Parties' response to s109 notice dated 6 November 2023, Annex 111, slide 85.

<sup>50</sup> Parties' response to s109 notice dated 27 November 2023, Annex 124-139.

<sup>51</sup> Parties' response to s109 notice dated 6 November, Annex 105, slide 5.

<sup>52</sup> Parties' response to s109 dated 27 November 2023, Annex 152, slide 15.



71. Some internal documents suggested that established brick-and-mortar players may have difficulties expanding their delivery options. For example, the information memorandum describes how brick-and-mortar pharmacies ‘[&lt;]’.<sup>53</sup>

#### 5.3.3.1 *Conclusion on internal documents*

72. The Parties’ internal documents provide strong evidence that the Parties monitor each other closely and regard each other as close competitor. There is consistent monitoring by Pharmacy2U of Lloyds Direct and its progress in the pharmacies market. No other pharmacy receives the same level of attention.

73. The CMA considers that the Parties’ internal documents also provides evidence that they consider the wider pharmacy landscape and how they perform against brick-and-mortar pharmacies. There is regular monitoring of brick-and-mortar pharmacies, particularly in marketing and advertising documents. Marketing studies also point to most customers seeing the Parties and other brick-and-mortar pharmacies as relatively substitutable.

#### 5.3.4 **Third-party evidence**

74. As part of its investigation, the CMA has considered evidence from third parties (competitors and public sector bodies) on the extent to which DSPs and brick-and-mortar pharmacies compete with each other and the impact that the Merger would have on competition.

##### 5.3.4.1 *Third-party views on competition between DSPs and brick-and-mortar pharmacies*

75. All third parties that the CMA consulted considered that Pharmacy2U and Lloyds Direct compete closely with each other.

76. Third parties told the CMA that DSPs and brick-and-mortar pharmacies competed against each other for POM nominations and were suitable alternatives to each other. One third party noted that DSPs and brick-and-mortar pharmacies target ‘the same customer base’ whilst another said that brick-and-mortar pharmacies were a ‘more than suitable alternative’ to DSPs.<sup>54</sup>

77. A small number of competitors told the CMA that some customers may not be able to access brick-and-mortar pharmacies because of opening hours or geographic location. For these customers brick-and-mortar pharmacies would not be a viable alternative to DSPs.<sup>55</sup> However, other third parties indicated that many brick-and-mortar pharmacies offered some form of delivery service. One third party

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<sup>53</sup> Parties’ response to s109 dated 27 November, Annex 40, slide 6.

<sup>54</sup> Responses to CMA questionnaire, February 2024, questions 6 and 8.

<sup>55</sup> Responses to CMA questionnaire, February 2024, questions 6 and 8.

submitted that there was 'still a large proportion of DSP items dispensed by other DSP providers, so there would still be competition within the DSP market even after the [M]erger'.<sup>56</sup> No third parties expressed concerns that vulnerable or housebound customers would be affected negatively by the Merger.

78. The above evidence indicates that third parties considered brick-and-mortar pharmacies as viable alternatives for the Parties customers. For those marginal customers that required POMs to be delivered, the evidence from third parties suggest that they could still rely on brick-and-mortar pharmacies that offer delivery services or switch nominations to one of the many DSPs operating in England.

#### 5.3.4.2 *Third-party views on the competitive effects of the Merger*

79. Some third parties noted that the Merger would create a leading player in the DSP market segment but differed on the impact the Merger would have on competition. Some third parties considered that the Merger would have little significant impact on the pharmacy market overall due to the relatively small market share held by the Parties as a proportion of all POMs dispensed.<sup>57</sup> One DSP told the CMA that the Merger would not have much impact on their business.<sup>58</sup> No public health bodies indicated that they had any competition concerns with the Merger, and submitted that, given the large number of other DSPs, there would still be competition within the DSP market post-Merger.<sup>59</sup>
80. However, some competitors submitted that the Merger would create a dominant player in online pharmacy delivery and that scale of the Merged Entity would enable it to negotiate more favourable terms with delivery partners, which would confer an unfair competitive advantage. Some competitors also noted that the Merged Entity's size and scale would require other suppliers to incur additional advertising costs, which would in turn lead to higher customer acquisition costs. Multiple third parties noted that the requirement to offer free delivery and the limitations of the existing pharmacy contract were key barriers to expanding online pharmacy offerings.

#### 5.3.4.3 *Conclusion on third-party evidence*

81. Based on the evidence above, the Parties are likely to compete closely with each other. However, the evidence above also indicates that the Parties compete with brick-and-mortar pharmacies and that brick-and-mortar pharmacies are a suitable alternative to DSPs for most customers. Subsequently, following the Merger, the Merged Entity will face significant competition from the large number of brick-and-

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<sup>56</sup> Submission to the CMA from a third-party, February 2024.

<sup>57</sup> Responses to CMA questionnaire, February 2024, question 11; and submission to the CMA from a third-party, February 2024.

<sup>58</sup> Responses to CMA questionnaire, February 2024, question 11.

<sup>59</sup> Submission to the CMA from a third-party, February 2024.

mortar pharmacies that supply the majority of POMs. Customers that cannot access brick-and-mortar pharmacies have the option of other DSPs or delivery options from some brick-and-mortar pharmacies.

82. Further, given that brick-and-mortar pharmacies are competing strongly with DSPs, the increased scale of the merged entity is unlikely to significantly change the pre-Merger competitive conditions.
83. Overall, the evidence in this section is broadly consistent with other evidence such as the Parties' switching data and internal documents that show the Parties competing with, and losing customers to, brick-and-mortar pharmacies.

### **5.3.5 CMA assessment**

84. Based on the evidence set out above, the CMA has assessed how closely the Parties compete with one another and whether the removal of the constraint that they place on each other would lead to a realistic prospect of an SLC in the supply of POMs in England. The CMA has also assessed the current competitive constraints placed on the Parties by other pharmacies, including other DSPs and brick-and-mortar pharmacies.
85. The Parties are the two largest DSPs by volume of POMs dispensed by DSPs, with a combined share of [40-50]%, incorporating a significant increment of [10-20]%. As none of the other DSPs have a market share above [0-5]%, this implies that the Parties are each other's closest competitors in a market as, the smaller the number of significant players, the stronger the prima facie expectation that two firms are close competitors.<sup>60</sup> However, switching data provided by the Parties suggests that the Parties may not compete as closely as the shares suggest, with only [0-5]% of Pharmacy2U customers that change their nomination leaving to Lloyds Direct. Nevertheless, the Parties' internal documents show the Parties consistently monitored each other and no other individual pharmacy received comparable levels of attention. In addition, all third parties that the CMA consulted considered that the Parties were each other's closest competitors. Subsequently, the CMA considers that there is strong evidence that the Parties are each other's closest competitors.
86. The CMA notes that there are many smaller, alternative DSPs that are active in the market. Whilst these DSPs likely exert a weak constraint individually, combined they account for nearly [50-60]% of the DSP market and have therefore been successful in winning nominations. This was supported by a public sector body that submitted that other DSPs would be available to customers and there would remain competition in the DSP market following the Merger.<sup>61</sup> The CMA

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<sup>60</sup> [CMA129](#), paragraph 4.10.

<sup>61</sup> Submission to the CMA from a third party, February 2024.

considers DSPs will provide a competitive constraint on the Parties following the Merger.

87. Evidence suggests that brick-and-mortar pharmacies are and will continue to be the predominant form by which POMs are dispensed. Brick-and-mortar pharmacies provide a wider range of services and options than DSP's, offering delivered and collected options through an extensive national network of community pharmacies. Deliveries from brick-and-mortar pharmacies are typically provided at a local level, based out of local pharmacies, and are almost always available free of charge for vulnerable customers. When looking at shares including brick-and-mortar pharmacies, the Parties' combined share is modest at [0-5]%. The Parties' share is substantially smaller than Boots ([10-20]%) and Bestway ([0-5]%) and comparable to other large pharmacy chains Tesco ([0-5]%), Rowlands ([0-5]%) and Day Lewis ([0-5]%). Beyond the larger chains, the market is highly fragmented with a majority of POMs dispensed by small independent pharmacies.
88. Switching analysis provided by the Parties shows that most of the nominations lost by Pharmacy2U were lost to brick-and-mortar pharmacies. Similarly, Pharmacy2U won most of its nominations from brick-and-mortar pharmacies. This indicates a large degree of competitive interaction between Pharmacy2U and brick-and-mortar pharmacies, likely reflects the broader pattern of competitive interaction that takes place between DSPs and indicates the wide range of brick-and-mortar pharmacies present in the wider market.
89. Third-party evidence supports that there is competition between brick-and-mortar pharmacies and DSPs. Almost all third parties consulted submitted that brick-and-mortar pharmacies competed with DSPs and that, for most customers, brick-and-mortar pharmacies were a suitable alternative to DSPs. Internal documents compared their performance to brick-and-mortar pharmacies and made business decisions in response to changes in the brick-and-mortar pharmacy market.
90. Having considered all of the evidence available to the CMA, the CMA considers that, whilst the Parties are close competitors, the Parties also compete with other smaller DSPs and brick-and-mortar pharmacies that will remain post-Merger. Many of these brick-and-mortar pharmacies are larger or comparable in size to the Parties and provide delivery options of their own. Consequently, the Parties will likely still face a strong competitive constraint from other pharmacies post-Merger. With regard to concerns raised by third parties, given the strong constraint the CMA considers the Merged Entity will face from brick-and-mortar pharmacies, the potential scale effects of the Merger are unlikely to change the pre-Merger competitive conditions.
91. Based on the above assessment, the CMA considers that the Merger will result in the removal of a direct constraint on each of the Parties, but the remaining

constraints from other DSPs and brick-and-mortar pharmacies will be sufficient to prevent an SLC in the supply of POMs.

## **5.4 Conclusion**

92. For the reasons set out above, the CMA does not believe that the Merger does give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of POMs.

## **6. ENTRY AND EXPANSION**

93. 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. The CMA will consider entry and/or expansion plans of rivals who do so in direct response to the merger as a countervailing measure that could prevent an 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.<sup>62</sup>
94. As the CMA has concluded that the Merger does not give rise to competition concerns, it is not necessary to consider countervailing factors in this decision.

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<sup>62</sup> [CMA129](#), paragraph 8.31.

## **DECISION**

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

**Kasia Bojarojc**  
**Director, Mergers**  
**Competition and Markets Authority**  
**12 March 2024**