

Appendix B: The Competition Commission's 2003 Remedy Package (FOPs)

- B.1 The Competition Commission (**CC**) made a number of recommendations to address the competition issues it identified in its [2003 report](#). Although the CC's inquiry differed in scope from the present market investigation and was carried out under a different statutory framework (the Fair Trading Act 1973), we believe it is helpful to consider the remedies the CC proposed, particularly as they relate to reducing barriers to consumer choice, and their effect.
- B.2 The CC identified several areas of conduct in the market for prescribed veterinary medicines that distorted competition,¹ including:
- (a) FOPs not informing owners that they can obtain prescriptions;
 - (b) FOPs failing to inform owners of the prices of medicines prior to dispensing, or not providing itemised bills;
 - (c) FOPs' pricing of medicines not reflecting costs of supply;
 - (d) FOPs pricing medicines to subsidise professional fees; and
 - (e) manufacturers failing to supply pharmacies on terms that would enable pharmacies to compete with FOPs, and wholesalers failing to market prescribed veterinary medicines to pharmacies.
- B.3 The CC further considered that these distortions led to customers paying higher prices, and having less choice, for prescribed veterinary medicines than they otherwise would² (including by comparison with other EU markets).³
- B.4 The CC also considered arguments that the behaviours it had competition concerns about served interests of public safety and animal welfare, for example:
- (a) that various negative outcomes would accompany widespread writing of prescriptions, such as an increase in fraud, a risk of dispensing the wrong medicines, an adverse impact on pharmacovigilance, and an increased failure to obtain and complete courses of treatment;⁴
 - (b) charging low professional fees (subsidised by prescription medicine prices) increases the likelihood animals are seen by a vet, which is in the interest of animal welfare, and that this supported vets' professional duty to support

¹ [2003 Report](#) (summary) paras 1.3 – 1.4.

² *Ibid*, para 1.8.

³ *Ibid*, paras 1.5 – 1.7.

⁴ *Ibid* para 2.147.

animal welfare including provision of emergency treatment, 24 hour cover and stocking of sufficient medicines, regardless of whether this is commercially advantageous.⁵

- B.5 However, the CC believed that attaining animal welfare and public safety goals did not necessitate continuing anti-competitive conduct. For example, it considered it was important for vets to charge 'realistic' rates for their professional services, and that uncompetitive pricing of veterinary medicines could also lead to outcomes at odds with public health and animal welfare goals, such as incentivising the use of unapproved alternatives or channels of supply.⁶
- B.6 Overall, it determined the claimed benefits did not outweigh the public detriments it had identified,⁷ and therefore decided to recommend a number of remedies. We consider those remedies below.

2005 transparency remedy (1): sign offering written prescriptions

- B.7 It was recommended that '...a large and prominently displayed sign in all veterinary surgeries advising clients on...the availability of – and charge for – prescriptions, consistent with recommendations (V) and (VI) [ie the offering of prescriptions, and requirement to do so without charge for three years], to enable them to obtain Prescription-only Medicines (**POMs**) from pharmacies if they wish...'
- B.8 This remedy was eventually implemented by means of an update to the RCVS Guide to Professional Conduct (now in the Supporting Guidance to the Code of Professional Conduct).⁸

2005 transparency remedy (2): sign displaying price list of top ten Prescription-only Medicine – Veterinarian medicines sold in FOPs

- B.9 The CC recommended requiring 'a large and prominently displayed sign in all veterinary surgeries advising clients on...the price of the ten POMs most commonly prescribed or dispensed by that surgery in a typical three-month period'.⁹
- B.10 This requirement was also originally implemented by an update to the RCVS Guide to Professional Conduct, though it was removed in 2013.¹⁰

⁵ Ibid, paras 2.148 – 2.149.

⁶ Ibid, para 2.157.

⁷ Ibid, para 2.160.

⁸ [Explanatory Memorandum, 2005 VMO, para 21.](#)

⁹ [2003 Report](#), summary, para 1.11.

¹⁰ [RCVS 2013, 'OFT agrees to drop 'top ten medicines' requirement'](#)

2003 transparency remedy (3): informing owners of the prices of POM-V medicines sold at FOPs

- B.11 The CC recommended a requirement for ‘a large and prominently displayed sign in all veterinary surgeries advising clients on...the availability of further information on prices of all POMs stocked or sold.’¹¹
- B.12 Alongside this recommendation was a ‘requirement for veterinary surgeons to inform clients, on request, of the price of any POM they propose to dispense and to quote the price of any POM stocked or sold to anyone who asks.’¹²
- B.13 This is also implemented in the Supporting Guidance to the RCVS Code, which places requirements on vets to provide customers with information on medicine prices (including prior to dispensing the medicine).

2005 transparency remedy (4): mandatory offer of a written prescription

- B.14 The CC recommended that vets offer ‘orally or in writing, prescriptions for POMs the veterinary surgeon recommends, except for those used emergency treatment, for treatments during surgical procedures or as anaesthetics; and for prescriptions requested in consequence to be provided by the veterinary surgeon’. Our qualitative research with vets indicated that while many (though not all) vets offered written prescriptions for on-going medication,¹³ some vets reported being directed not to proactively offer written prescriptions.¹⁴ The significant numbers of consumers in our pet owners survey who reported not being aware that they could obtain a prescription for use elsewhere is also relevant.¹⁵

Other 2005 transparency remedies

- B.15 The CC recommended other transparency remedies applying to vets, namely:
- (a) itemised bills; and
 - (b) information on repeat prescription prices, and re-examination charges.
- B.16 These have been implemented via the Supporting Guidance to the RCVS Code.

2005 prescription fee price control

- B.17 The CC (by a majority decision) considered that, for a transitional period of three years, vets must offer written prescriptions free of charge to encourage consumers

¹¹ 2003 Report (summary) para 2.190(I).

¹² Ibid, para 2.190(II).

¹³ Medicines working paper, para 5.23.

¹⁴ Medicines working paper, para 5.20.

¹⁵ Medicines working paper, para 5.17(a).

to make greater use of pharmacies (at that point, primarily bricks and mortar businesses). This recommendation was implemented by way of the [Supply of Veterinary Medicinal Products Order 2005 \(2005 VMO\)](#), for a three-year period commencing 31 October 2005.¹⁶

Other 2005 remedies

- B.18 A number of the remedies recommended by the CC and implemented in the 2005 VMO were designed to remove some of the barriers to entry faced by pharmacy businesses, including by:
- (a) forbidding unreasonable discrimination between FOPs and pharmacies in prices, rebates or terms and conditions for prescribed veterinary medicines;
 - (b) requiring the provision of certain pricing information by manufacturers.
- B.19 Finally, there were several further recommendations directed at the regulatory framework (such as making reviews of distribution categories automatic at specific intervals). Most were accepted by government in principle, though have not in all cases been implemented.¹⁷

Effects of the 2005 remedies

- B.20 Clearly there are several important differences between the market examined by the CC in 2003 and today. For example, online pharmacies were in their infancy,¹⁸ as was the corporatisation of FOP businesses.¹⁹ Corporate practices were not necessarily large, and the CC suggested there was little evidence of substantial buyer power among FOP businesses.²⁰ Conversely, our emerging views suggest that some LVGs and, to an extent, buyer groups can exert a degree of market power in negotiations with manufacturers.²¹
- B.21 However, we note that several of the concerns the CC identified, and recommended remedies to address, are consistent with our emerging concerns. For example:
- (a) The CC cited evidence that only around 16% of cat and dog owners surveyed were aware that they could request a written prescription for dispensing by a pharmacy.²² Despite the RCVS Supporting Guidance's requirement to display a sign noting the availability of written prescriptions,

¹⁶ 2005 VMO, Article 3.

¹⁷ See [House of Commons Hansard Written Ministerial Statements for 9 Jul 2003 \(pt 1\)](#)

¹⁸ [2003 Report](#), para 6.206.

¹⁹ *Ibid*, para 9.21.

²⁰ *Ibid*, para 9.23.

²¹ [Medicines working paper](#), para 6.16.

²² [2003 Report](#), para 6.168.

our pet owners survey indicates significant numbers of pet owners (38%) remain unaware of the availability of written prescriptions.²³

- (b) Survey evidence had suggested 52% of respondents had not been informed of the price of the medicine received before dispensing.²⁴ The mandatory publication of the prices for the top ten products sold in FOPs was part of the remedy package to address this concern. At the point of removal, the RCVS noted that the calculation of 'top ten' medicines had often varied between FOPs, and felt that this, coupled with the rise of internet searches had made 'the list less meaningful as a tool that allowed consumers to shop around'.²⁵ However, our pet owners survey suggests that a large majority of respondents remain unaware of any price savings they might obtain by shopping around.²⁶

- B.22 The fact that the CC's recommendations around the proactive offering of written prescriptions were never apparently implemented in full is also noteworthy, in the context of evidence indicating continued significant unawareness of the availability of written prescriptions.
- B.23 In the context of the price control applied to prescription fees, we note that vets in our qualitative research cited the prescription fee as a reason for declining to offer a written prescription to pet owners for one-off medication.²⁷
- B.24 The 2005 VMO Regulatory Impact Assessment expected that, in light of these remedies, prices for prescribed veterinary medicines would fall significantly and animal owners would benefit accordingly.²⁸ While the evidence suggests online pharmacies have succeeded in entering the market, our emerging view is that customers may be facing rising, rather than decreasing, medicine prices at FOPs, and that the competitive constraint posed by alternative retail channels for veterinary medicines remains weaker than we might expect in a well-functioning market.²⁹
- B.25 We therefore consider that, as we develop our thinking on remedies, it is appropriate to consider the effects of the 2005 remedies (particularly as they relate to encouraging consumer choice) alongside the changes in the market structure since 2005 and the possibilities afforded by new technologies.

²³ [Medicines working paper](#), para 5.17(a).

²⁴ [2003 Report](#), para 6.174.

²⁵ *Ibid.*

²⁶ [Medicines working paper](#) paras 5.18 – 5.19.

²⁷ [Medicines working paper](#), para 5.23(a).

²⁸ [2005 VMO Regulatory Impact Assessment](#), para 44.

²⁹ See [Medicines working paper](#), paras 3.12 -3.19 and 5.36 to 5.46.