



DETERMINATION OF MERGER NOTIFICATION M/15/076 - UNIPHAR/LINDCHEM

Section 21 of the Competition Act 2002

Proposed acquisition by Uniphar plc of sole control of Lindchem Limited

Dated 29 January 2016

Introduction

1. On 21 December 2015, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby Uniphar plc (“Uniphar”) would acquire the remaining [...] % of the issued share capital and, thus, sole control of Lindchem Limited (“Lindchem”). Uniphar currently holds [...] % of Lindchem’s issued share capital.
2. In the notification to the Commission, the parties provided a copy of a Call Option Agreement dated [...] which gave Uniphar the option to acquire the remaining [...] % of Lindchem’s issued share capital. The parties have confirmed that Uniphar now intends to exercise this option. Section 18(1A)(b)(ii) of the Act allows for parties to make a notification to the Commission where the parties have demonstrated to the Commission a good faith intention to conclude an agreement or a merger or acquisition is agreed. In this case, the Commission considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an acquisition for the purposes of section 18(1A)(b)(ii) of the Act.

The Undertakings Involved

Uniphar

3. Uniphar, a public limited company headquartered in Dublin, has two main business divisions: Uniphar Wholesale and Allphar Services Limited (“Allphar”), a wholly-owned subsidiary of Uniphar.
4. Uniphar Wholesale is a full-line wholesaler of pharmaceutical, healthcare, medical, and veterinary products to pharmacies, hospitals and veterinary surgeons in the State. Uniphar Wholesale purchases a wide range of products from manufacturers and re-sells them to community pharmacies and hospitals. Due to licensing requirements, Uniphar Wholesale does not sell to customers outside the State. Uniphar operates four storage and distribution depots in Dublin, Cork, Sligo and Limerick.
5. Uniphar Wholesale’s activities encompass the following four product categories:



- The wholesale supply of pharmacy-only human pharmaceutical drugs including both prescription medicines and pharmacy-only, over-the-counter medicines;
 - The wholesale supply of front-of-counter and non-pharmacy-only products. This includes health and beauty products and human pharmaceutical drugs such as paracetamol, the sale of which is not confined to pharmacies;
 - The wholesale supply of medical products (e.g., urology and ostomy-related products, diagnostic kits, enteral feeding tubes, etc); and
 - The wholesale supply of veterinary drugs.
6. Allphar is a pre-wholesale logistic service provider in respect of pharmaceutical products, healthcare products, veterinary products and healthcare equipment and acts for that purpose as a sole agent and distributor in the State on behalf of manufacturers. Allphar's core function is to warehouse and distribute pharmaceutical, healthcare and veterinary products on behalf of its client companies. It also provides additional services including marketing and administrative support. Allphar mainly supplies to full-line pharmaceutical wholesalers, pharmacies and hospitals. Allphar is also involved to a limited extent in the direct supply of pharmaceutical products to pharmacies on behalf of manufacturers.
7. For the financial year ending 31 December 2014, Uniphar's worldwide turnover was approximately €1.13 billion, all of which was generated in the State.

Lindchem

8. Lindchem, a private limited company headquartered in Dublin, owns 28 community pharmacies in the State, all operating under the "Allcare" brand, which supply a full range of prescription medicines, non-prescription medicines and non-medicinal products and services.
9. As noted above, Uniphar currently holds [...] % of Lindchem's issued share capital. The remaining [...] % is held as follows:
- Tony McEntee – [...] %;
 - Alan McLean – [...] %;
 - Andrew Sharkey – [...] %;
 - Jalan Limited – [...] %;
 - Dermot Ryan – [...] %; and
 - Peter Maher – [...] %.
10. For the financial year ending 31 December 2014, Lindchem's worldwide turnover was approximately €12.4 million, all of which was generated in the State.

Rationale for the Proposed Transaction



11. The parties state in the notification:

“Lindchem will constitute an investment holding of Uniphar.”

Third Party Submissions

12. No submission was received.

Competitive Analysis

13. There is both a horizontal and vertical overlap between the parties’ activities in the State.

Horizontal Overlap

14. There is a horizontal overlap between the parties’ activities with respect to the operation of community pharmacies in the State. Lindchem operates 28 community pharmacies in the State. Uniphar holds a majority shareholding in the following five community pharmacies in the State:¹

- Morgan’s Medical Hall (Kilcarrig Pharmacy Limited), Tullow, Co. Carlow – [...];
- Chambers (L.W. Enterprises Limited), 127 Ballymun Road, Dublin 9 – [...];
- Dunville Pharmacy Limited, 32-34 Dunville Avenue, Dublin 6 – [...];
- Collis Pharmacy Limited, 350 North Circular Road, Phibsboro, Dublin 7 – [...];
and
- Phelan’s (Ballyvolane Pharmacy Limited), Ballyvolane, Co. Cork – [...].

15. There is no horizontal overlap between the parties’ activities with respect to the operation of community pharmacies in Co. Carlow, Dublin 9, or Dublin 7 since Lindchem does not own or operate a community pharmacy in these areas. There is, however, a horizontal overlap between the parties’ activities with respect to the operation of community pharmacies in Dublin 6 and Ballyvolane, Co. Cork.

16. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission does not need to come to a definitive view on the precise relevant product market in this instance since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant product market is defined narrowly (e.g., the supply of prescription medicines in community pharmacies) or more broadly to encompass the supply of prescription medicines, non-prescription medicines and non-medicinal products and services in community pharmacies.

17. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market in this instance since its conclusion on the competitive

¹ Uniphar states in the notification: “[...] [...] the Commission has assumed that Uniphar controls all five pharmacies for the purpose of its review of the proposed transaction.



impact of the proposed transaction will be unaffected whether the relevant geographic market is defined as local, regional or national. In order, however, to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission assessed its impact by reference to the narrowest possible relevant markets, namely the market for the supply of prescription medicines in community pharmacies in the two areas in which Uniphar and Lindchem both own community pharmacies:

- Dublin 6; and
- Ballyvolane, Co. Cork.

The Supply of Prescription Medicines in Dublin 6

18. Lindchem owns Bourkes Pharmacy located in Rathmines, Dublin 6 while Uniphar holds a majority shareholding in Dunville Pharmacy located in Ranelagh, Dublin 6. The distance between these two pharmacies is approximately 1km. In total, there are twenty community pharmacies currently operating in Dublin 6 which act as a competitive constraint on Uniphar and will continue to do so post-transaction. The Commission therefore considers that the proposed transaction will not substantially lessen competition in the potential market for the supply of prescription medicines in community pharmacies in Dublin 6.

The Supply of Prescription Medicines in Ballyvolane, Co. Cork

19. Uniphar holds a majority shareholding in Phelan's pharmacy located in Ballyvolane, Co. Cork.² The nearest Lindchem community pharmacy to Phelan's pharmacy is O'Carroll's Pharmacy located in Blackrock, Co. Cork, which is a distance of approximately 3km. There are at least five community pharmacies located closer to Phelan's pharmacy in Ballyvolane than O'Carroll's Pharmacy.³ All five pharmacies act as a competitive constraint on Uniphar and will continue to do so post-transaction. The Commission therefore considers that the proposed transaction will not substantially lessen competition in the potential market for the supply of prescription medicines in community pharmacies in Ballyvolane, Co. Cork.

Vertical Relationship

20. There is a vertical relationship between the parties in the State since Uniphar currently supplies various products (including human pharmaceutical drugs) to Lindchem's 28 community pharmacies in the State.
21. In its assessment of the proposed transaction, the Commission considered the likelihood that the proposed transaction would provide Uniphar with the ability and incentive to foreclose its rival full-line wholesaler of human pharmaceutical drugs,

² Ballyvolane is located approximately 3km from Cork city centre.

³ Those community pharmacies are: Wallace's Pharmacy, Ballyvolane Shopping Centre; Glenheights Pharmacy, College Shopping Centre, Ballyvolane; Bourke's Pharmacy, Iona Park, Mayfield; Irwin's Pharmacy, Mayfield Shopping Centre; and, Walsh's Pharmacy, Old Youghal Road.



United Drug plc, by, for example, restricting its ability to supply products to community pharmacies in the State.

22. [...] Lindchem's pharmacies will therefore continue to purchase the bulk of their requirements of products (including human pharmaceutical drugs) from Uniphar post-transaction.
23. Lindchem's 28 community pharmacies, however, only represent 1.5% of the total number of community pharmacies (which amounts to 1,797 community pharmacies⁴) currently operating in the State.
24. Uniphar [...] has short-term exclusive purchasing arrangements (typically covering [...]% of each pharmacy's total purchases) with [...] community pharmacies, representing approximately [...]% of the total number of community pharmacies currently operating in the State.
25. Uniphar will therefore not, by reason of the proposed transaction, have the ability to foreclose United Drug from supplying products to the vast majority (in excess of [...]%) of community pharmacies currently operating in the State.
26. The Commission also considers that Uniphar will not have the incentive to foreclose rival community pharmacies by, for example, raising its wholesale prices for human pharmaceutical drugs. The vast majority of the €1.13 billion revenue generated by Uniphar in 2014 came from the full-line wholesaling of various products to community pharmacies in the State. In contrast, Lindchem's 28 community pharmacies generated turnover of €12.4 million in 2014. Any attempt by Uniphar to foreclose rival community pharmacies will lead to such pharmacies switching their purchases of human pharmaceutical drugs (and other products) to Uniphar's main rival, United Drug. The increase in sales revenue in Lindchem's 28 community pharmacies (and in the five pharmacies in which Uniphar holds a majority shareholding) would not compensate Uniphar for the loss of sales revenue in the full-line wholesale of human pharmaceutical drugs (and other products) to community pharmacies in the State.
27. In light of the above, the Commission considers that the proposed transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

28. No ancillary restraints were notified.

⁴ The figure for total community pharmacies in the State was sourced by the parties from the Pharmaceutical Society of Ireland's database.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby Uniphar plc would acquire [...] % of the issued share capital and, thus, sole control of Lindchem Limited will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Gerald FitzGerald
Member
Competition and Consumer Protection Commission