



DETERMINATION OF MERGER NOTIFICATION M/16/063 – FANNIN LIMITED (DCC PLC)/MEDISOURCE IRELAND LIMITED

Section 21 of the Competition Act 2002

Proposed acquisition by DCC plc, through its subsidiary Fannin Limited, of the entire issued share capital of Medisource Ireland Limited

Dated 17 January 2017

Introduction

1. On 8 December 2016, in accordance with section 18(1) 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 DCC plc (“DCC”), through its subsidiary Fannin Limited (“Fannin”), would acquire sole control of Medisource Ireland Limited (“Medisource”).

The Proposed Transaction

2. The proposed transaction is to be implemented pursuant to a share and purchase agreement (“SPA”) between the registered and beneficial owners of Medisource and Fannin dated 11 November 2016, which provides for the acquisition by Fannin of the entire issued share capital of Medisource.
3. Following the implementation of the proposed transaction, Medisource will be under the sole control of DCC, through Fannin.

The Undertakings Involved

DCC/Fannin

4. DCC is an international sales, marketing, distribution and business support services group, which is organised and managed in four separate divisions, each of which is focused on specific market sectors, namely: DCC Energy, DCC Technology, DCC Healthcare and DCC Environmental.



5. Fannin, a private limited company incorporated in the State, is a subsidiary of DCC Vital Limited which is part of the DCC Healthcare division. Fannin supplies medical devices, medicinal products and related services to the hospital and retail pharmacy sector in the State, particularly in the areas of respiratory, oncology, haematology, anaesthesia, immunology and infection control.
6. Fannin has agreements with pharmaceutical manufacturers for the supply of medicinal products in the State, including agreements with [...]¹ and [...] which provide for the supply of exempt medicinal products (“EMP”)². Detailed information on EMP is set out in paragraphs 14 to 17 below.
7. For the financial year ended 31 March 2016, DCC’s worldwide turnover was approximately €14.5 billion, of which approximately €[...] million was generated in the State.

Medisource

8. Medisource is a private limited company registered in the State, and is headquartered in Wicklow. It is involved in procuring and supplying pharmaceutical products (in particular, EMP) at the wholesale level.
9. Medisource holds pharmaceutical manufacturing and wholesale licences from the Health Products Regulatory Authority (“HPRA”), which enables Medisource to import products from both EU and non-EU suppliers. It also holds a wholesale dealer licence from the Medicines and Healthcare Products Regulatory Agency in the UK for a premises located in Northern Ireland.
10. Medisource operates licensed pharmaceutical warehouses located in the UK and in the State that facilitate same day/next day delivery of pharmaceutical products as required across Europe.

¹ [...] is the trading name of [...].

² EMP are pharmaceutical products which are not available in the State under a marketing authorisation granted by the Health Products Regulatory Authority, but which, subject to certain criteria, may be sourced outside of the State and used within the State. More information on EMP is provided in paragraphs 14 to 17 of this Determination.



11. For the financial year ended 30 April 2016, Medisource's worldwide turnover was approximately € [...] million, of which approximately € [...] million was generated in the State.

Rationale for the Proposed Transaction

12. DCC states in the notification:

*"DCC considers that Medisource represents a complementary addition to Fannin's pharmaceutical supply activities. The service and product offering of Medisource will enhance Fannin's relationships with its ultimate customers while providing DCC with insights into new potential 'in-licensing' opportunities."*³

Third Party Submissions

13. No submission was received.

Background – What is EMP?

14. While medicines placed on the market in the State are required to have a marketing authorisation issued by the HPRA, European legislation provides for an exemption to this rule, i.e., EMP.⁴ Pursuant to EU law, medicines not holding a marketing authorisation may be supplied where a registered doctor or dentist has prescribed the product for an individual patient under his or her direct responsibility⁵ in order to fulfil the special needs of such patient.
15. Pharmaceutical suppliers and wholesalers purchase EMP from international manufacturers and provide an Irish route to market for such manufacturers, by supplying EMP in the State. Once EMP have been sourced from outside of the State, the wholesale distribution of EMP within the State is similar to the distribution of other human pharmaceutical drugs in the State. The Commission's predecessor, the

³ Page 5, section 2.7 of the notification.

⁴ Pursuant to Article 5 of Directive 2001/83/EC.

⁵ Suppliers in the State who hold Wholesale Distribution Authorisations are permitted to source EMP from within the European Economic Area ("EEA"). Holders of Pharmaceutical Manufacturing Authorisations are permitted to import EMP from non-EEA countries.



Competition Authority, provided an overview of the pharmaceutical wholesaling sector in its merger determination in relation to *M/12/027 Uniphar/CMR*⁶.

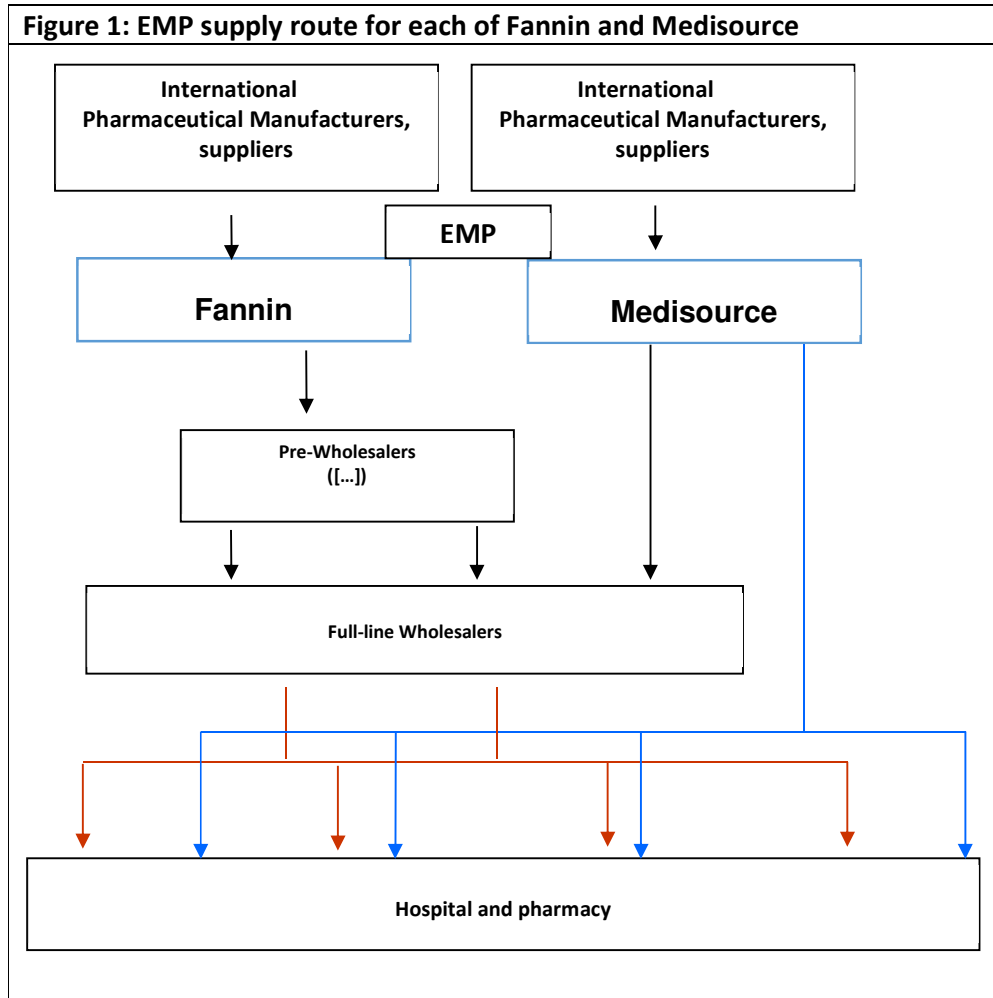
16. Both of Fannin and Medisource purchase EMP from international manufacturers and supply EMP in the State. However, Fannin and Medisource's supply models are different as shown in Figure 1 below. Fannin obtains EMP from [...] and [...] and uses a pre-wholesale agent, [...], which is the pre-wholesaling division of [...], to supply EMP to wholesalers and large pharmacy customers in the State. [...] (by value) of Fannin's ultimate customers for EMP are hospitals (almost all of which purchase via [...])⁷. Fannin's retail pharmacy customers include [...] and [...]⁸.
17. Medisource directly sources EMP from manufacturers/international suppliers, such as [...] ⁹, [...], [...], [...] and [...], and acts as a wholesaler and distributor of EMP to retail and hospital pharmacies. Medisource also has some minimal activities as a supplier of EMP to third party wholesalers in the State (i.e., [...]).

⁶ Please see: <http://www.ccpc.ie/enforcement/mergers/merger-notices/m12027-unipharcmr>

⁷ Fannin also supplies a small amount of EMP directly to hospital pharmacies.

⁸ [...] is the trading name of [...].

⁹ [...].



Competitive Analysis

Horizontal Overlap

18. There is a horizontal overlap between the activities of the parties within the State. Both DCC/Fannin and Medisource are involved in the supply of EMP in the State. For the reasons given below, the Commission considers that the horizontal overlap is not significant and that, post-transaction, the merged entity will continue to face competition for the supply of EMP in the State.

Product Market Definition



19. The European Commission has previously sub-divided the wholesale distribution of pharmaceuticals on the basis of the following three categories¹⁰:
 - (a) Types of wholesalers, i.e., full-line wholesalers and short-line wholesalers;
 - (b) Types of products, such as, whether the medicine may be sold with a prescription or over-the-counter; whether it is an originator, generic or parallel import medicine; and whether the medicine may be sold in retail pharmacies under the supervision of a pharmacist only or also in other outlets such as supermarkets;
 - (c) Types of customers due to different purchasing and delivery patterns, such as retail pharmacies, dispensing doctors and hospitals.
20. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The view of the parties involved is that the supply of EMP forms part of the broader sector for the supply of pharmaceutical products.
21. In M/04/020 *Uniphar/Whelehan*, the Commission's predecessor, the Competition Authority, considered that the relevant product market was the distribution service provided by full-line pharmaceutical wholesalers for the supply of human pharmaceutical medicines.¹¹ In M/12/027 *Uniphar/CMR*, the Competition Authority considered that the pre-wholesale supply of human pharmaceutical drugs was a separate product market to the full-line wholesale supply of human pharmaceutical drugs. Thus, the competitive analysis in each of those determinations was focused on whether different types of distribution models are close substitutes.
22. In this instance, it is not necessary for the Commission to define precise relevant product markets because the precise product market definition adopted will not materially alter the Commission's assessment of the competitive impact of the proposed transaction. However, for the purpose of reviewing the competitive effects of the proposed transaction, the Commission has assessed its impact by reference to the supply of EMP at the wholesale level given that Medisource's main business activity is the supply of EMP in the State at the wholesale level.

¹⁰ M.4301- *Alliance Boots/Cardinal Health*; M.6044 *Alliance Boots/Andrae-Noris Zahm*; M.7818 *McKesson/UDG Healthcare*.

¹¹ Please see: <http://www.ccpic.ie/enforcement/mergers/merger-notices/m04020-uniphar-whelehan>



Geographic Market Definition

23. The European Commission in its previous decisions noted that the relevant geographic market is either national or regional in scope, due to the emphasis placed by customers on the frequency and speed of delivery of medical products.¹² The Competition Authority in its merger determination in relation to *M/12/027 Uniphar/CMR* considered the relevant geographic market to be national, given that most wholesalers operate at a national level. In this instance, the choice of geographic market will not materially alter the competitive impact of the proposed transaction in the State. Consequently, the Commission considers that the issue of the appropriate geographic market can be left open in this instance. However, for the purposes of reviewing the competitive effects of the proposed transaction, the Commission considered the relevant geographic market to be national, i.e., on the basis that both of the parties operate at a national level.

Competitive Effects

24. The parties argue that, based on the total volume of EMP imported into the State per annum as recorded by the HPRA¹³, Fannin's and Medisource's market shares for the supply of EMP to the pharmacy sector (hospital and retail) in the State are, respectively, [5-10%] and [10-20%]. The parties also argue that the parties' estimated market shares for the supply of EMP, including compounded products, in the State are [0-5%] and [10-20%], respectively, for Fannin and Medisource¹⁴.

25. Therefore, post-transaction the merged entity's share of supply of EMP in the State would be (by volume) [18-23%]. An estimated post-transaction market share of [15-20%] to [20-25%] does not in and of itself suggest that the proposed transaction would give rise to a substantial lessening of competition for the supply of EMP in the State. In particular, post-transaction, there would be other EMP suppliers active in the State

¹² M.7721-Celesio/Sainsbury's UK pharmacy business; M.7323-Nordic Capital/GHD Verwaltung.

¹³ Which does not include compounded EMP packs sold in the State.

¹⁴ A compounded product is a pharmaceutical product required in a specific formulation and specific dosage form (e.g. IV nutrition for neo-natal infants or chemotherapy products for oncology) which, because it is not available in a licensed form in any jurisdiction, may be manufactured either in a hospital pharmacy or in a regulator-approved, GMP compliant aseptic facility. Such products are also classified as EMP.



which would continue to exert a competitive constraint on the merged entity, such as Actavis Ireland Limited, United Drug, Uniphar (Pharmasource), IDIS¹⁵ and Q M Specials Limited. Estimated market share information for the other suppliers in the EMP sector in the State indicates that some of the wholesale competitors' market positions are quite strong, such as Actavis Group (with a share of [20-25%]) and Uniphar (PharmaSource) (with a share of [10-15%]).

26. With respect to the procurement of EMP from manufacturers, Medisource has [] exclusive agreement with its suppliers¹⁶ Therefore, international EMP suppliers can supply to other wholesalers in the State. It is possible for other wholesalers currently active in the State who hold Wholesale Distribution Authorisations to source similar types of EMP to those supplied by Medisource from manufacturers located within the European Economic Area. The parties argue that the costs to wholesalers of switching between manufacturers of EMP are not significant¹⁷. Therefore, post-transaction, other wholesalers not presently supplying EMP of the type provided by each of Fannin and Medisource would be able to obtain equivalent supplies of EMP from manufacturers.¹⁸
27. At the wholesale level, the parties argue that switching by pharmacies is straightforward and common. The parties argue that Fannin and Medisource do not enter into exclusive or principal supply agreements with wholesalers or retail/hospital pharmacy customers for the supply of EMP. Therefore, switching costs are likely to be low for wholesalers and for retail/hospital pharmacy customers.
28. Furthermore, the Health Service Executives ("HSE") "List of Exempt Medicinal Products (ULMs) which Accompanies Circular 039/16 August 2016" (the "List"),¹⁹ suggests that Fannin and Medisource currently do not overlap in terms of the types of EMP they supply which are on the List. The parties state that "*the range of EMP supplied by Fannin (via [...]) on the one hand and Medisource on the other does not overlap to any material*

¹⁵ IDIS is part of Clinigen Group plc.

¹⁶ [...].

¹⁷ Switching costs are determined by the requirements necessary to change distributor, e.g. IT changes.

¹⁸ The direct supply of EMP by manufacturers would also take place.

¹⁹ Medicines on the List are prescribed for Medical Card Patients on properly completed GMS prescription forms. Suppliers can dispense and claim for products electronically using the codes specified in the List.



*degree (any such overlap would involve less than [0-5%] of the activities of either party) and is thus complementary rather than substitutable”.*²⁰

29. Overall, the Commission considers that post-transaction the merged entity will continue to face competitive constraints from other wholesalers at the level of the procurement of EMP from international manufacturers and at the level of the distribution of EMP to pharmacies (including hospital pharmacies), with switching costs for pharmacies likely to be low. The Commission therefore considers that the merged entity will continue to face competition for the supply of EMP in the State.

Vertical Issues

30. There is a potential vertical relationship between Fannin and Medisource, on the basis that Medisource distributes most of its EMP directly to retail/hospital pharmacies, while Fannin uses pre-wholesalers (namely, [...]) and wholesalers to supply its EMP to downstream retail/hospital pharmacies.
31. The merged entity could seek to distribute Fannin’s EMP directly to pharmacies rather than using [...]. The Commission considers that given the limited market presence of Fannin in the EMP sector in the State (with a share of [5-10%]), if the merged entity were to decide to supply EMP directly to retail/hospital pharmacies using Medisource’s distribution channel, it would not raise competitive concerns.
32. Furthermore, as neither Fannin nor Medisource operates any pharmacies in the State, the merged entity is unlikely to have an incentive to limit supplies of EMP to wholesalers because the loss in sales to full-line wholesalers (such as United Drug or Uniphar) is not likely to be offset by increased sales to pharmacies.
33. For these reasons, the Commission considers that the proposed transaction does not give rise to any vertical competition concerns.

Conclusion

²⁰ Notification, page 14.



34. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

35. No ancillary restraints were notified.



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 DCC plc, through its subsidiary Fannin Limited, would acquire sole control of Mediasource Ireland 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

Patrick Kenny
Member
Competition and Consumer Protection Commission