

# DETERMINATION OF MERGER NOTIFICATION M/18/031 - UNIPHAR / SISK HEALTHCARE

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## Section 21 of the Competition Act 2002

**Proposed acquisition by Uniphar Public Limited Company of sole control of ROI Healthco IOM 2 Limited (SISK Healthcare)**

**Dated 17 August 2018**

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### **Determination**

Pursuant to section 20(3) of the Competition Act 2002, as amended (“the Act”), Uniphar Public Limited Company (“Uniphar”) has submitted to the Competition and Consumer Protection Commission (“the Commission”) the proposals set out below relating to the proposed acquisition by Uniphar of the entire issued share capital and thus sole control of ROI Healthco IOM 2 Limited and all of its subsidiaries (collectively “SISK Healthcare”), for the purpose of ameliorating any effects on competition in markets for goods or services, with a view to the proposals becoming binding on Uniphar.

The Commission has taken the proposals into account and in light of the said proposals (which form part of the basis of its determination) has determined, in accordance with section 21(2)(a) of the Act, that the result of the proposed acquisition whereby Uniphar would acquire sole control of SISK Healthcare 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

**Brian McHugh**  
**Member**  
**Competition and Consumer Protection Commission**



## PROPOSALS BY UNIPHAR RELATING TO THE PROPOSED ACQUISITION OF ROI HEALTHCO IOM 2 LIMITED (SISK HEALTHCARE) ("Proposals")

### RECITALS

- a) On 26 April 2018, the proposed acquisition by Uniphar of SISK Healthcare was notified to the Commission under Part 3 of the Act.
- b) Uniphar and SISK Healthcare are both active in the supply of medical supplies/devices in the State.
- c) Uniphar acts primarily as a pre-wholesaler/logistics services provider through its subsidiary, Allphar. SISK Healthcare acts as a distributor/wholesaler through its four business units, namely M.E.D. Surgical, Cardiac Services, Tekno Surgical and Synapse Medical. In particular, both Uniphar and SISK Healthcare supply orthopaedic products, diagnostic imaging products and custom procedure packs, which SISK Healthcare distributes through its Tekno Surgical, Synapse Medical and M.E.D. Surgical business units respectively.
- d) Pursuant to Section 20(3) of the Act, Uniphar has submitted the Proposals to the Commission relating to the Proposed Transaction for the purpose of ameliorating any possible effect of the Proposed Transaction on competition in markets for goods or services, with a view to the Proposals becoming binding on Uniphar and, following Completion, on SISK Healthcare.
- e) The Proposals submitted by Uniphar are intended to prevent the exchange of competitively sensitive information between Uniphar and SISK Healthcare, relating to orthopaedic products, diagnostic imaging products and custom procedure packs, following Completion.
- f) The Proposals are also intended to ensure that, following Completion, SISK Healthcare will be managed separately to Uniphar and will continue to manage its own business relationships, in particular, those with customers and suppliers of orthopaedic products, diagnostic imaging products and custom procedure packs, including SISK Healthcare's relationships with [...], [...], [...] and [...].

#### A. Definitions

1. For the purpose of the Proposals, the following terms shall have the following meaning:

"**Act**" means the Competition Act 2002, as amended;

"**Allphar**" means All-Phar Services Limited, a private limited company incorporated under the laws of Ireland (Registration No. 52690), which has its registered address at 4045 Kingswood Road, Citywest Business Park, Co. Dublin;

"**Allphar Officer**" means any director or the Company Secretary of Allphar;



"**Allphar Personnel**" means any director, officer, manager, employee, representative, agent, or person holding equivalent functions, of Allphar;

"**Cash SPA**" means the Share Purchase Agreement (Cash Consideration) dated 25 April 2018 between ROI Healthco IOM 1 Limited, [...], [...] and Uniphar;

"**Commencement Date**" means the date of the Commission's Determination;

"**Commission**" means the Competition and Consumer Protection Commission and its successors;

"**Common Group Officers**" means the persons from time to time holding the positions of Chief Executive Officer, Chief Financial Officer, Chief Operating Officer and Company Secretary of Uniphar plc;

"**Completion**" means completion of the Proposed Transaction as defined in the Cash SPA and Share Purchase Agreement (Share Consideration) dated 25 April 2018 between ROI Healthco IOM 1 Limited, [...], [...] and Uniphar;

"**Confidentiality Commitment**" means the commitments outlined at Part B paragraph 3 of the Proposals;

"**Determination**" means the Determination of the Commission pursuant to section 21(2)(a) of the Act that the Proposed Transaction may be put into effect;

"**Firewall Commitment**" means the commitments outlined at Part B paragraphs 1 and 2 of the Proposals;

"**Proposed Transaction**" means the proposed acquisition by Uniphar of the entire issued share capital of SISK Healthcare as notified to the Commission on 26 April 2018;

"**SISK Healthcare**" means ROI Healthco IOM 2 Limited, a private limited company, incorporated under the laws of the Isle of Man (Registration Number: 007776V), which has its registered address at First Names House, Victoria Road, Douglas, IM2 4DF, Isle of Man. For the avoidance of doubt, this definition of "SISK Healthcare" includes all of its subsidiaries;

"**SISK Healthcare Competitively Sensitive Information**" means any specific information (in particular information relating to SISK Healthcare's current and future strategic intentions; past, present or future negotiations with customers, manufacturers and suppliers; and/or disaggregated information relating to current or future SISK Healthcare discounts, rebates, pricing and promotional activity) concerning SISK Healthcare's supply of orthopaedic products, diagnostic imaging products or custom procedure packs (including information relating to the supply of [...] orthopaedic products, [...] and [...] diagnostic imaging products and [...] custom procedure packs) where the disclosure of such information to third parties would constitute a breach of Section 4(1) of the Act. For the avoidance of doubt, information that is available in any form to the public by lawful means, other than as a result of a breach of the Proposals, shall not be considered to constitute "SISK Healthcare Competitively Sensitive Information";



"**SISK Healthcare Management Team**" means a restricted group of SISK Healthcare Personnel who (i) directly support the SISK Healthcare Manager in administering that part of the SISK Healthcare business that requires access to SISK Healthcare Competitively Sensitive Information and (ii) to fulfil properly their role and functions, must have access to SISK Healthcare Competitively Sensitive Information; provided that, in all events, the SISK Healthcare Management Team is kept at all times to the least number of SISK Healthcare Personnel possible (consistent with good commercial practice);

"**SISK Healthcare Manager**" means the person, [...], who has been appointed by Uniphar to undertake the day-to-day management of SISK Healthcare following Completion, and his successors in this role;

"**SISK Healthcare Officer**" means any director or the Company Secretary of SISK Healthcare;

"**SISK Healthcare Personnel**" means any director, officer, manager, employee, representative, agent, or person holding equivalent functions, of SISK Healthcare;

"**Term**" means five years beginning on the Commencement Date;

"**Uniphar**" means Uniphar plc, a public limited company incorporated under the laws of Ireland (Registration No. 224324), which has its registered address at 4045 Kingswood Road, Citywest Business Park, Co. Dublin. For the avoidance of doubt, this definition of "Uniphar" includes all its subsidiaries with the exception, following Completion, of SISK Healthcare;

"**Uniphar Competitively Sensitive Information**" means any specific information (in particular information relating to current and future strategic intentions; past, present or future negotiations with customers, manufacturers and suppliers; and/or disaggregated information relating to current or future discounts, rebates, pricing and promotional activity) concerning Uniphar's supply or delivery of orthopaedic products, diagnostic imaging products or custom procedure packs (including information relating to the supply of [...] orthopaedic products, [...] diagnostic imaging products and [...] and [...] custom procedure packs) where the disclosure of such information to third parties would constitute a breach of Section 4(1) of the Act. For the avoidance of doubt, information that is available in any form to the public by lawful means, other than as a result of a breach of the Proposals, shall not be considered to constitute "Uniphar Competitively Sensitive Information";

"**Uniphar Compliance Officer**" means the person, [...], who has been appointed by Uniphar to oversee compliance with the Proposals, as contemplated at Part B paragraph 9 of the Proposals; and

"**Uniphar Personnel**" means any director, officer, manager, employee, representative, agent, or person holding equivalent functions, of Uniphar.

## B. Undertakings by Uniphar

### ***Firewall Commitment***

1. On Completion, Uniphar undertakes that:



- a. Uniphar shall appoint the SISK Healthcare Manager to undertake the day-to-day management of SISK Healthcare.
  - b. Uniphar shall (within one month of Completion) provide to the Commission in writing the name and contact details of each member of the SISK Healthcare Management Team.
2. During the Term, Uniphar undertakes that:
- a. Uniphar shall ensure the separate management of SISK Healthcare and Uniphar, as provided under the terms of these Proposals. In particular, Uniphar shall procure that the SISK Healthcare Manager will continue to manage SISK Healthcare's business relationships in Ireland with [...], [...], [...] and [...].
  - b. Uniphar shall procure that the SISK Healthcare Manager inform [...], [...], [...] and [...] that the SISK Healthcare Manager, the SISK Healthcare Management Team, and in limited circumstances, the SISK Healthcare Officers and Common Group Officers, shall be the sole recipients within SISK Healthcare and Uniphar of SISK Healthcare Competitively Sensitive Information.
  - c. Subject to paragraph 2 h, Uniphar shall procure that only the SISK Healthcare Manager and SISK Healthcare Management Team, and no Uniphar Personnel (including, for the avoidance of doubt, Allphar Personnel), will have access to SISK Healthcare Competitively Sensitive Information.
  - d. Subject to paragraph 2 g, Uniphar shall ensure that no SISK Healthcare Personnel will have access to Uniphar Competitively Sensitive Information.
  - e. Uniphar shall inform [...], [...], [...] and [...] that Uniphar Personnel, excluding any SISK Healthcare Personnel, shall be the sole recipients of Uniphar Competitively Sensitive Information.
  - f. Uniphar shall take all reasonable steps to ensure that the positions of SISK Healthcare Manager and Uniphar Compliance Officer are not vacant at any time.
  - g. Uniphar shall, to the extent that any Common Group Officer obtains Uniphar Competitively Sensitive Information for the purpose of complying with his/her statutory or common law duties as a company director or company secretary of Allphar:
    - (i) ensure that that person shall not disclose such information to any SISK Healthcare Personnel (other than, if necessary, one or more Common Group Officers); and
    - (ii) procure that the Company Secretary of Allphar shall promptly inform the Uniphar Compliance Officer, who shall in turn within two (2) weeks inform the Commission, of the precise scope and nature of the Uniphar Competitively Sensitive Information obtained.



- h. Uniphar shall, to the extent that any Common Group Officer obtains SISK Healthcare Competitively Sensitive Information for the purpose of complying with his/her statutory or common law duties as a company director or company secretary of SISK Healthcare:
  - (i) ensure that that person shall not disclose such information to any Uniphar Personnel (including, for the avoidance of doubt Allphar Personnel) (other than, if necessary, one or more Common Group Officers); and
  - (ii) procure that the SISK Healthcare Manager shall within two (2) weeks inform the Commission of the precise scope and nature of the SISK Healthcare Competitively Sensitive Information obtained.
- i. Neither the SISK Healthcare Manager nor any member of the SISK Healthcare Management Team shall serve simultaneously as an officer, director, representative, agent or persons holding equivalent functions of Uniphar without the prior written consent of the Commission (such consent not to be unreasonably withheld or denied).
- j. Uniphar shall ensure that, other than the Chief Executive Officer of Uniphar, the Chief Financial Officer of Uniphar and the Company Secretary of Uniphar, no Uniphar Personnel or any Allphar Personnel will serve simultaneously as an officer, director, secretary, representative, agent or persons holding equivalent functions of SISK Healthcare, save with the prior written consent of the Commission (such consent not to be unreasonably withheld or denied).
- k. The terms of this paragraph 2 are subject to paragraph 3 g and 3 h.

### ***Confidentiality Commitment***

- 3. During the Term, Uniphar undertakes that:
  - a. Uniphar shall procure that the SISK Healthcare Manager and the SISK Healthcare Management Team shall not discuss SISK Healthcare Competitively Sensitive Information with, or provide SISK Healthcare Competitively Sensitive Information to, Uniphar or any Uniphar Personnel or Allphar Personnel.
  - b. Uniphar shall not (and shall not permit Uniphar Personnel or Allphar Personnel to) solicit, directly or indirectly, SISK Healthcare Competitively Sensitive Information from SISK Healthcare or any SISK Healthcare Personnel or from the SISK Healthcare Manager or SISK Healthcare Management Team.
  - c. Uniphar shall take all reasonable steps to ensure that neither SISK Healthcare Personnel, the SISK Healthcare Manager nor the SISK Healthcare Management Team shall provide SISK Healthcare Competitively Sensitive Information to Uniphar or to any Uniphar Personnel or Allphar Personnel.



- d. Uniphar shall not directly or indirectly provide (and shall use reasonable endeavours to prevent Uniphar Personnel or Allphar Personnel from providing directly or indirectly) Uniphar Competitively Sensitive Information to SISK Healthcare Personnel, the SISK Healthcare Manager or the SISK Healthcare Management Team.
- e. Uniphar shall use reasonable endeavours to procure that SISK Healthcare shall not (and SISK Healthcare shall not permit SISK Healthcare Personnel to) solicit, directly or indirectly, Uniphar Competitively Sensitive Information from Uniphar or any Uniphar Personnel.
- f. Uniphar undertakes to inform Uniphar Personnel, Allphar Personnel and SISK Healthcare Personnel of their respective responsibilities pursuant to the Proposals and shall provide both training and written guidelines to them in that regard.
- g. The Proposals shall not prevent any disclosure of SISK Healthcare Competitively Sensitive Information to Uniphar (or to any Uniphar Personnel or Allphar Personnel) in order for Uniphar to comply with any applicable law or regulation (including stock exchange rules or securities laws), or judicial or arbitral process of competent jurisdiction, or required by a competent authority.
- h. The Proposals shall not prevent any disclosure of SISK Healthcare Competitively Sensitive Information to Common Group Officers for use in connection with any offering (or proposed offering) of securities by Uniphar.

C. Compliance

- 4. Uniphar shall submit to the Commission within twelve (12) months of the Commencement Date, and, at intervals of one year thereafter during the Term, a written certificate in the form set out in Schedule A, signed by an executive director of Uniphar confirming that Uniphar has complied with its obligations set out in the Proposals in the preceding period.
- 5. Uniphar shall procure that SISK Healthcare submit to the Commission within twelve (12) months of the Commencement Date, and, at intervals of one year thereafter during the Term, a written certificate in the form set out in Schedule B, signed by a member of the SISK Healthcare Management Team, confirming that SISK Healthcare has complied with its obligations set out in paragraphs 2 a, 2 b, 2 c, 2 h, 3 a and 3 e of the Proposals in the preceding period.
- 6. The Commission reserves the right to require Uniphar to provide to the Commission, at any time and on reasonable notice, such additional information as the Commission requires which is necessary in order for the Commission to verify Uniphar's compliance with its obligations set out in the Proposals. Uniphar shall provide to the Commission all such information in its possession promptly.
- 7. The Commission may provide with reasonable notice and on reasonable terms such written directions to Uniphar from time to time as needed to require compliance with the Proposals. Uniphar shall comply promptly with any written direction issued by the Commission pursuant to the Proposals.



8. Uniphar shall provide written notice to the Commission in advance of any change of the SISK Healthcare Officers, Allphar Officers, Common Group Officers, the SISK Healthcare Manager, the SISK Healthcare Management Team or the Uniphar Compliance Officer and shall promptly provide to the Commission the name and contact details of any person who is to replace the prior nominated SISK Healthcare Manager, a member of the SISK Healthcare Management Team, a SISK Healthcare Officer, an Allphar Officer, a Common Group Officer or the Uniphar Compliance Officer. Where practicable, Uniphar shall take all reasonable steps to provide such written notice one month in advance of any change.
9. The Uniphar Compliance Officer will have responsibility for monitoring compliance by Uniphar and SISK Healthcare with the Proposals and for responding to any request for information received from the Commission in connection with the Proposals. Uniphar shall provide the name and contact details of the Uniphar Compliance Officer to the Commission and shall promptly inform the Commission of any change of the Uniphar Compliance Officer and shall promptly provide to the Commission the name and contact details of the person who is to replace the Uniphar Compliance Officer.
10. The Proposals, with the exception of paragraph 1 of the Firewall Commitment, will come into effect on the Commencement Date and will remain in force during the Term. Paragraph 1 will come into force on Completion. For the avoidance of doubt, the Proposals shall have no retrospective effect.
11. In response to a reasoned written request from Uniphar, the Commission may at its sole discretion waive, modify or substitute any provision in the Proposals. At any time, subject to providing Uniphar 30 days' written notice (unless waived by the Commission at its discretion) allied to providing Uniphar with an opportunity to provide a written submission to the Commission, the Commission may at its sole discretion waive, modify or substitute any provision in the Proposals.
12. Clause 3.9 of the Cash SPA requires the ongoing provision, post-Completion, of information, in particular information relating to [...] (the "**Clause 3.9 Information**"), by Uniphar to [...]. In line with the Confidentiality Commitment and Firewall Commitment, Uniphar shall procure that, to the extent that the Clause 3.9 Information comprises SISK Healthcare Competitively Sensitive Information it should be provided to [...] pursuant to Clause 3.9 of the Cash SPA only by the SISK Healthcare Manager and, in accordance with paragraph 13, shall not be disclosed to any Uniphar Personnel other than the Common Group Officers.
13. For the avoidance of doubt, nothing in these Proposals shall prevent the Common Group Officers from reviewing any Clause 3.9 Information and/or any information required to produce the Clause 3.9 Information. In line with these Proposals, Uniphar shall ensure that, in performing their functions under this paragraph 13, the Common Group Officers do not disclose any of the Clause 3.9 Information to any other Uniphar Personnel.

Dated 16 August 2018





**SIGNED** for and on behalf of  
**UNIPHAR PUBLIC LIMITED COMPANY**  
by its duly authorised representative

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE A**  
[Uniphar Headed Paper]

[date]

Ibrahim Bah  
Director  
Competition Enforcement and Mergers  
Competition and Consumer Protection Commission  
Bloom House  
Railway Street  
Dublin 1

**Merger Notification M/18/031 Uniphar/SISK Healthcare**

Dear Sir

I refer to Merger Notification M/18/031 in relation to the proposed acquisition by Uniphar plc ("Uniphar") of ROI Healthco IOM 2 Limited which was notified to the Competition and Consumer Protection Commission (the "Commission") on 26 April 2018 (the "Proposed Transaction").

The Commission issued its Determination clearing the Proposed Transaction on [ ] August 2018.

In accordance with the terms of the proposals given by Uniphar to the Commission on [ ] August 2018 in relation to the Proposed Transaction which, in accordance with Section 20(3), Section 26(1) and Section 26(4) of the Competition Act 2002, as amended, have become commitments binding upon Uniphar (the "Commitments"), I hereby confirm Uniphar's compliance with the terms of the Commitments during the period commencing on [the date of the Determination] / [date of the previous certificate issued by Uniphar] and ending on the date hereof.

I sign this letter without liability on my part.

Yours faithfully,

\_\_\_\_\_  
[Name]  
[Executive Director Uniphar plc]

**SCHEDULE B**

[Relevant SISK Healthcare Headed Paper]

[date]

Ibrahim Bah  
Director  
Competition Enforcement and Mergers  
Competition and Consumer Protection Commission  
Bloom House  
Railway Street  
Dublin 1

**Merger Notification M/18/031 Uniphar/SISK Healthcare**

Dear Sir

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I sign this letter without liability on my part.

Yours faithfully,

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[Name]

[Member of the SISK Healthcare Management Team]