DETERMINATION OF MERGER NOTIFICATION M/19/046 – RECIPHARM/CONSORT

Section 21 of the Competition Act 2002

Proposed acquisition by Recipharm Holdings Limited of sole control of Consort Medical PLC.

Dated 28 January 2020

Introduction

1. On 20 December 2019, 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 Recipharm Holdings Limited ("Recipharm Holdings"), a wholly-owned subsidiary of Recipharm AB ("Recipharm"), would acquire sole control of Consort Medical PLC ("Consort") (the "Proposed Transaction").

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a takeover offer under Part 28 of the United Kingdom's Companies Act 2006 and the United Kingdom's City Code on Takeovers and Mergers. The notifying parties have announced that they have reached an agreement on the terms of a recommended cash offer by Recipharm Holdings for the entire issued and to be issued share capital of Consort.

3. The notifying parties state that following completion of the Proposed Transaction, Consort's shares will be delisted from the London Stock Exchange and will be held directly by by Recipharm Holdings.

The Undertakings Involved

The Acquirer – Recipharm

4. Recipharm is a contract development and manufacturing organisation ("CDMO"), providing drug development and manufacturing services globally to the pharmaceutical industry ("CDMO services"). Recipharm is a public liability company registered and headquartered in Sweden. Recipharm Holdings is a private limited company registered and headquartered in the United Kingdom.

5. Recipharm manufactures several hundred different products including both finished dose pharmaceuticals ("FDPs"), active pharmaceutical ingredients ("APIs") and clinical trial materials for customers in the pharmaceutical industry. Recipharm also provides its customers with a comprehensive packaging service in a variety of formats, as well as

a range of "value added" services such as quality assurance, regulatory services and logistics solutions.

6. In the State, Recipharm supplies CDMO services for solid FDPs and APIs to pharmaceutical companies. Recipharm, however, has no physical presence in the State.

7. For the financial year ending [31 December 2018], Recipharm's worldwide turnover was approximately €621 million, of which approximately €[…] was generated in the State.

The Target – Consort

8. Consort is a public limited company incorporated in England and Wales, with its shares admitted to trading on the London Stock Exchange. Consort supplies CDMO services globally, providing drug formulation and manufacturing services to the pharmaceutical industry. Consort formulates and manufactures both FDPs and APIs, and develops and manufactures drug delivery devices. Consort operates manufacturing plants in the United Kingdom, Germany and Italy. Consort's head office and main operations are in the United Kingdom.

9. While it offers a full range of CDMO services in the State, Consort currently only provides CDMO services for solid FDPs to pharmaceutical companies in the State. In addition, it is also involved in manufacturing and supply of devices and the development of device manufacturing programmes for pharmaceutical companies in the State. Consort, however, has no physical presence in the State.

10. For the financial year ending 30 April 2019, Consort's worldwide turnover was approximately €[…], of which approximately €[…] was generated in the State.

Rationale for the Proposed Transaction

11. The notifying parties state the following in the notification:

> *"*[Recipharm's] *aim is to become a leading global CDMO."*

Third Party Submissions

12. No submission was received.

Competitive Analysis

Horizontal Overlap

13. There is a horizontal overlap between the activities of Recipharm and Consort in the State since both are active in the supply of CDMO services (specifically for solid FDPs) to pharmaceutical companies.

Market Definition

14. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case.

15. With respect to the relevant product market, the European Commission has previously considered the possibility that the supply of CDMO services may be segmented by dosage, by pharmaceutical form (e.g., solids, semi-solids, injectables), or by manufacturing process (e.g., toxicity, sterile environment, etc.).[1] The European Commission, however, has left open the precise product market definition.[2]

16. In this instance, the Commission does not need to come to a definitive view on the precise relevant product market since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant market is defined narrowly (e.g., by pharmaceutical form or by manufacturing process) or more broadly to encompass the supply of all types of CDMO services. For the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrowest potential product market, i.e., the supply of CDMO services for solid FDPs.

17. With respect to the relevant geographic market, the European Commission has previously considered the market for the supply of CDMO services to be at least European Economic Area ("EEA")-wide.[3]

18. The Commission does not need to come to a definitive view with respect to the relevant geographic market in this instance since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant market is defined narrowly (i.e., the State) or more broadly (i.e., the EEA). For the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrowest potential geographic market, i.e., the State.

Competitive Assessment

19. There is a horizontal overlap between Recipharm and Consort in the State for the supply of CDMO services for solid FDPs.

20. The Commission considers that the Proposed Transaction raises no horizontal competition concerns in the State for the following reasons.

21. First, while the notifying parties were unable to provide to the Commission estimated market shares in the potential market for the supply of CDMO services for solid FDPs in the State, the notifying parties expressed the view to the Commission that their respective market shares in the State are minimal.[4]

22. For the year ending [31 December 2018], Recipharm generated turnover of approximately €[…] from the supply of CDMO services for solid FDPs in the EEA, of which approximately €[…] was generated in the State. Recipharm informed the Commission

[1] See European Commission decision in *M.8385 – Pillarstone/Famar*, paragraph 25, which can be accessed at https://ec.europa.eu/competition/mergers/cases/decisions/m8385_234_7.pdf

[2] See, for example, European Commission decision in *M.8541 – Thermo Fisher Scientific/Patheon* which can be accessed at https://ec.europa.eu/competition/mergers/cases/decisions/m8541_147_3.pdf ; European Commission decision in *M.8632 – Lonza Group/Capsugel* which can be accessed at https://ec.europa.eu/competition/mergers/cases/decisions/m8362_333_3.pdf

[3] See, for example European Commission decision in *M.8385 – Pillarstone/Famar*, paragraph 25, which can be accessed at https://ec.europa.eu/competition/mergers/cases/decisions/m8385_234_7.pdf

[4] The notifying parties informed the Commission that they were unable to provide estimated market shares for the supply of CDMO services for solid FDPs in the State as estimates for the total size of this potential market are not available.

that it estimates that its share of the potential market for the supply of CDMO services for solid FDPs in the EEA is less than [0-5]%. Recipharm was unable to provide an estimate for the State but expressed the view to the Commission that it has a similar market share in the supply of CDMO services for solid FDPs in the State.

23. For the year ending 30 April 2019, Consort generated turnover of approximately €[…] from the supply of CDMO services for solid FDPs in the EEA, of which approximately €[…] was generated in the State. Consort informed the Commission that it estimates that its share of the potential market for the supply of CDMO services for solid FDPs in the EEA is less than [0-5]%. Consort was unable to provide an estimate for the State but expressed the view to the Commission that it has a similar market share in the supply of CDMO services for solid FDPs in the State.

24. The Commission considers that the Proposed Transaction will result in a minimal increase in Recipharm's market share in the supply of CDMO services for solid FDPs in the State due to the relatively small level of turnover generated by Consort in the State from this activity.

25. Second, following completion of the Proposed Transaction, Recipharm will continue to face a competitive constraint from a number of other suppliers of CDMO services for solid FDPs in the State, including Alkermes Public Limited Company, Propak Health Limited, Alby Pharma, Patheon N.V., Catalent, Inc., and Aenova Group GmbH.

26. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the potential market for the supply of CDMO services for solid FDPs in the State.

Vertical relationships

27. There is a vertical relationship between Recipharm and Consort in the State since Recipharm purchases drug delivery devices manufactured by Consort for use with Recipharm-manufactured FDPs.

28. The Commission considers that the Proposed Transaction raises no vertical competition concerns in the State for the following reasons.

29. First, Recipharm does not control from whom it purchases drug delivery devices because its customers specify the manufacturer of the drug delivery devices.

30. Second, Recipharm informed the Commission that it purchases drug delivery devices in the United Kingdom and therefore there is no vertical relationship between Recipharm and Consort in the State.

31. In light of the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

32. 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

33. No ancillary restraints were notified.

Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby Recipharm Holdings Limited, a wholly-owned subsidiary of Recipharm AB, would acquire sole control of Consort Medical PLC 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