DETERMINATION OF MERGER NOTIFICATION M/12/017 -

United Care/Pharmexx

Section 21 of the Competition Act 2002

Proposed acquisition by United Care Limited of Pharmexx GmbH

Dated 9 November 2012

Introduction

1. On 22 August 2012, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed acquisition by United Care Limited ("United Care"), a wholly-owned subsidiary of United Drug PLC ("United Drug"), of Pharmexx GmbH ("Pharmexx") and its interests in 39 subsidiary companies, including Pharmexx Ireland (Sales Solutions) Limited ("Pharmexx Ireland").

2. On 20 September 2012, the Authority served a Requirement for Further Information on each of United Drug and Pharmexx GmbH pursuant to section 20(2) of the Act. This automatically suspended the procedure for the Authority's Phase 1 assessment.

3. Upon receipt of the responses to the Requirements for Further Information, the "appropriate date" (as defined in section 19(6) of the Act) became 10 October 2012.[1]

4. During the investigation, the Authority sought the views of customers and competitors of the merging parties. The Authority also sought the views of recruitment agencies.

5. The Authority requested and received, on an on-going basis, further information and clarifications from the notifying parties.

The Undertakings Involved

Acquirer

United Drug

6. United Drug, incorporated in the Republic of Ireland and listed on the Dublin and London stock exchanges, is an international provider of services to healthcare manufacturers and pharmaceutical retailers. In the State, United Drug, through its wholly owned subsidiary Ashfield Healthcare (Ireland) Limited ("Ashfield"), provides pharmaceutical outsourcing services including: (a) contract sales services, (b) nurse advisor services[2], (c) sales force effectiveness training[3], and (d) business

[1] The "appropriate date" is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.
[2] Nurse advisors are registered nurses who can provide support and training to health care professionals and GP practices. The nurse advisor role includes educating clinical staff and/or patients

edge training[4]. United Drug informed the Authority that sales force effectiveness training and business edge training are "add ons" offered by Contract Sales Organisations ("CSOs") to develop the skills of sales representatives but contract sales services can be provided to customers without these "add ons". Pharmexx Ireland does not provide sales force effectiveness training or business edge training to customers in the State.

7. For the year ending 30 September 2011, United Drug's worldwide turnover was €1,746 million. Its turnover in the State for the same period was €[…].

Vendor

Celesio AG

8. Celesio AG, incorporated in Germany and listed on the German stock exchange, is a worldwide provider of logistics and services in the pharmaceutical and healthcare sector.

Target

Pharmexx GmbH

9. Pharmexx is a wholly owned subsidiary of Admenta Deutschland GmbH which is, in turn, a member of Celsio AG. Pharmexx is incorporated in Germany.

10. Pharmexx is an international outsourcing services provider of sales and marketing to the pharmaceutical industry. In the State, Pharmexx, through Pharmexx Ireland, provides outsourced sales representatives to pharmaceutical companies. There is no horizontal overlap between the parties with respect to the provision of sales force effectiveness training and business edge training in the State.

11. There is also no current horizontal overlap between the parties with respect to the provision of nurse advisory services since Pharmexx Ireland does not provide nurse advisory services in the State.[5]

12. For the year ending 31 December 2011, Pharmexx's worldwide turnover was €[…]. Its turnover in the State for the same period was €[…].

The Proposed Transaction and Rationale

13. The proposed transaction involves the acquisition by United Care of all the shares of Pharmexx and its 39 subsidiary companies including Pharmexx

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in the use of medical products (in both clinical and/or home settings), and performing audit services in primary care and GP surgeries.

[3] United Drug informed the Authority that sales force effectiveness training is provided to sales representatives in order to improve their promotional techniques. It involves real-life pharmaceutical sales training scenarios to assess and benchmark industry personnel whilst accommodating specific customer objectives.

[4] United Drug informed the Authority that business edge training relates to issues such as performance leadership and management.

[5] Pharmexx Ireland stopped providing nurse advisory services in the State in December 2010. Absent the proposed transaction, the relevant counterfactual is whether Pharmexx Ireland is an important potential competitor to Ashfield in the provision of nurse advisory services in the State. Internal documentation provided to the Authority by Pharmexx indicates that Pharmexx Ireland does not have any plans to re-enter the market for the provision of nurse advisory services in the State due to the significant investment required. And given its recent departure from the business, it seems unlikely that Pharmexx is exerting a current pro-competitive influence.

Ireland. Pharmexx currently holds […]% of the shares in Pharmexx UK Holdings Limited. Pharmexx UK Holdings Limited currently holds[…]% of the issued share capital in Pharmexx Ireland. Private individual shareholders hold the remaining […]% of the issued share capital in Pharmexx Ireland. The private shareholders are not selling their shares in Pharmexx Ireland to United Care as part of the proposed transaction.

14. With regard to the commercial rationale for the proposed transaction, the parties state in the notification that:

> "The commercial rationale for the proposed transaction for United Drug is to gain greater access to the international pharmaceutical outsourcing market(s), and to facilitate United Drug in being able to provide global contract sales outsourcing services to the pharmaceutical industry. Celesio AG considers that the proposed transaction allows it to focus on its core business. Celesio AG believes that United Drug is well positioned to further develop Pharmexx's international potential."

15. The strategic rationale for the proposed transaction is also highlighted in the following quote taken from an internal document provided to the Authority by United Drug entitled "Project Zeta – Board Review Paper" dated July 2012:

> "[…]"

Third Party Submissions

16. No submission was received. However, in order to ascertain the views of pharmaceutical companies, the Authority designed a questionnaire to be answered by customers of Ashfield and Pharmexx Ireland. The questionnaire consisted of questions about the respondent's experience with using CSOs and its views about the proposed transaction.

17. The Authority sent the questionnaire to the parties' top five customers in the State. Since one customer appears on both parties' top five lists, nine customers in total were contacted by the Authority. […]% of Ashfield's total CSO sales in the State for the year ending 30 September 2011 were accounted for by sales to its top five customers. […]% of Pharmexx Ireland's total CSO sales in the State for 2012 (1 January-30 September) were accounted for by sales to its top five customers.

18. All nine customers returned a completed questionnaire to the Authority. The Authority subsequently contacted some of these nine customers in order to discuss further their responses to the Authority's questionnaire.

Industry Background – The Supply of Outsourced Sales Representatives to Pharmaceutical Companies

19. Pharmaceutical companies employ sales representatives to promote and market new and existing healthcare products to customers (i.e., pharmacies, general practitioners, and hospital consultants). Information obtained during the investigation indicates that the majority of sales representatives are directly employed in-house by pharmaceutical companies (circa 80-90%). For the other 10-20%, pharmaceutical

companies use CSOs to provide and manage outsourced sales representatives.

20. The sales representatives provided by CSOs to pharmaceutical companies can be divided into three broad categories:

    a) Vacancy Management: this is an outsourcing arrangement whereby the CSO provides a sales representative to fill a casual vacancy (e.g., during maternity leave or if a sale representative becomes ill).

    b) Dedicated Sales: this outsourcing arrangement can be seasonal (for instance, to promote vaccines) and in any event tends to be for an initial period of up to twelve months. During the dedicated period, the sales representative works exclusively on behalf of the pharmaceutical company.

    c) Syndicated Sales: this outsourcing arrangement (sometimes refereed to as Shared Sales Teams) enables pharmaceutical companies to share a sales representative's call time to customers (i.e., calls to general practitioners, hospital consultants, etc.). The cost of the sale representative is spread among pharmaceutical companies making it more cost efficient. A syndicated sales outsourcing arrangement is typically spread across pharmaceutical companies as follows: 60% (known as Detail 1), 30% (known as Detail 2) and 10% (known as Detail 3) of the sales representative's call time.

21. Market inquiries carried out by the Authority revealed that one of the main reasons why pharmaceutical companies use the services of CSOs is flexibility. When asked in the questionnaire why they use the services of CSOs, some customers said the following:

> "flexibility to meet the changing needs of the business is the principal reason for using outsourced/contract sales staff."
>
> "contract sales personnel are ideal to support short-term business needs [e.g., maternity cover] and can be contracted flexibly to meet reactive business needs."
>
> "the advantages of outsourcing are flexibility in hiring for defined short/medium term contracts to suit a defined project. The management of these people can also be outsourced."
>
> "CSOs allow for staffing flexibility and also enable us to pulse our business requirements - if we require extra sales representatives over a short period of time, for example a product launch, we can use CSOs without having to increase headcount on our books."

22. Pharmaceutical companies typically invite CSOs to submit a tender before selecting a CSO. Pharmaceutical companies will appoint a CSO to supply a specified number of sales staff for a specified time period. CSOs administer the employment of the sales representatives chosen by pharmaceutical companies. The need for sales representatives may arise

due to new product introductions, existing product promotions, or the loss of in-house sales staff to maternity leave or illness.

23. Some CSO companies directly employ sales representatives on full time contracts in order to service the needs of pharmaceutical companies as and when required. Other CSOs such as Ashfield do not retain sales representatives on a full time basis but instead recruit sales staff on an ad hoc basis upon winning an assignment from a customer. Ashfield informed the Authority that it employs sales staff only in the event that these sales representatives are accepted by the pharmaceutical company. The typical length of an outsourced sales representative contract with a CSO is twelve months.[6]

24. CSOs also maintain a list of sales representatives who are available for work at any given time. These are sometimes referred to as "free agents". United Care informed the Authority that it estimates that there are approximately 410 free agents in the State not affiliated with either a CSO or a pharmaceutical company. United Care informed the Authority that this figure comprises of "200 free agents following various downsizing and redundancies undertaken by pharmaceutical companies, a graduate pool of approximately 200 candidates, and an undefined number of sales representatives that wish to move from other sales positions (car sales, construction, etc) into pharmaceutical sales."

25. Pharmexx informed the Authority that it estimates that there are approximately […] free agents available in the State.[7] […].

Analysis

Overlap in the Activities of the Parties

26. There is horizontal overlap between the parties in the State with respect to the provision of outsourced sales representatives to pharmaceutical companies. As noted above, there is no horizontal overlap between the parties with respect to the provision of nurse advisory services in the State. There is no vertical relationship between the parties in the State.

Relevant Product Market

Views of the Undertakings Involved

27. An economic report prepared by RBB Economics ("The RBB Report"), commissioned at the request of United Drug, was submitted with the notification.

28. The RBB Report states that the parties' activities overlap in the supply of dedicated outsourced salespeople to pharmaceutical companies. The RBB Report states that this service represents the narrowest potential product market for the assessment of the proposed transaction. The RBB Report states that the relevant market may, however, also encompass sales personnel directly employed by pharmaceutical companies.

[6] Once the contract with a CSO expires, it is either renewed or, if not, the sales representative reverts back to the CSO. Sometimes the pharmaceutical company may hire the sales representative on a permanent basis. If the CSO recruits sales staff on an ad hoc basis, then the sales representative will become a free agent at the end of a contract that is not renewed.
[7] This estimate by Pharmexx is based on the number of sales representatives keen to register for work with Pharmexx Ireland.

29. The RBB Report states that "pharmaceutical companies use outsourced salespeople to undertake promotional activity for their products. Pharmaceutical manufacturers also maintain large teams of in-house staff for the same purpose." The RBB Report states that "direct employment is the primary mechanism through which pharmaceutical manufacturers obtain salespeople."

30. The RBB Report states that "there are no substantive functional differences in the assignments for which pharmaceutical companies use outsourced and directly employed staff (subject to the caveat that vacancy management, the cover of permanent staff on maternity or sick leave, will normally be met via a CSO rather than direct employment)." The RBB Report states that "any given promotional assignment could readily be undertaken by either an in-house or an outsourced sales person or team." The RBB Report states that "the primary benefit of the outsourcing model is that it affords pharmaceutical companies a degree of flexibility in their promotional planning."

31. The RBB Report states that "pharmaceutical companies already have the administrative infrastructure in place to use direct employment and so would quickly and easily be able to switch a particular assignment or role from the use of outsourced sales personnel to the use of direct employed staff." The RBB Report states that "every current and potential customer of the parties' CSO services would be able to switch away from the use of outsourced sales personnel simply by expanding their existing direct sales teams."

32. The RBB Report states that "pharmaceutical companies can readily switch from the use of outsourced sales staff to direct employment." The RBB Report states that it "appears likely that a […]% increase in the cost of outsourced sales staff would lead pharmaceutical companies to disintermediate CSOs and to substitute towards the use of directly employed salespeople."

Views of the Competition Authority

33. In order to inform its analysis of the relevant product market definition, the Authority sought the views of the top five customers of each notifying party in the State. These market inquiries revealed that the split between direct employment and outsourced sales representatives for most pharmaceutical companies is around 80/20%.

34. As noted above, market inquiries revealed that one of the main reasons why pharmaceutical companies use the services of CSOs is flexibility. This raises the question of whether the service provided by a CSO could be seen as a complementary service to the direct employment of salespeople as opposed to a substitute service. The Authority raised this question with the parties.

35. The parties responded to the Authority by stating that "notwithstanding the differences in costs and flexibility, the use of CSO salespeople and direct employment represent economic substitutes for pharmaceutical companies. Salespeople employed through these two mechanisms undertake the same functions and fulfill the same purpose for pharmaceutical companies. The fact that pharmaceutical companies choose to split their sales staff requirements between these two means of procurement does not preclude substitution between the two."

36. In its questionnaire to the parties' top five customers, the Authority asked whether there is any specific aspect of the service provided by a CSO that a customer is unable to provide itself in-house. All pharmaceutical companies contacted by the Authority responded no. One customer stated that "all [CSO] services could be achieved in-house if affordable." This might seem to suggest that the service provided by a CSO could be seen as a substitute to the direct employment of sales representatives by pharmaceutical companies, but that would depend on affordability. Significantly, the RBB Report states that "vacancy management, the cover of permanent staff on maternity or sick leave, will normally be met via a CSO rather than direct employment." An internal document provided by Pharmexx entitled "Management Presentation" dated April 2012 indicates that […]% of its turnover comes from vacancy management.

37. When asked in the questionnaire about the likely competitive impact of the proposed transaction, some customers expressed views which suggest that they perceive CSOs to compete in a separate CSO market that is complementary to the direct employment of sales representatives by Pharmaceutical companies. For example, one customer stated that "No [concerns] because there will be at least 3 very credible options in the market place in Quintiles, Ashfield and Pharmaforce". A second customer stated that "overall competitiveness in the market will inevitably be reduced with fewer players." A third customer stated that "where three potential suppliers would remain in the market sufficient competition should be present post-transaction." A fourth customer stated "No [concerns], still a very competitive market."

38. For the purpose of its competitive assessment, the Authority will examine the competitive impact of the proposed transaction in the market for the provision of outsourced sales representatives to pharmaceutical companies. This is the narrowest possible product market affected by the proposed transaction. The Authority, however, does not need to come to a definitive view on the precise relevant product market because its conclusions concerning the competitive impact of the proposed transaction, outlined below, would be unaffected whether the relevant product market is narrow (i.e., CSOs) or broader to encompass, for example, the direct employment of sales representatives by pharmaceutical companies.

39. The competitive constraint exerted by the direct employment of sales representatives by pharmaceutical companies is considered in detail below in the section assessing the competitive impact of the proposed transaction.

Relevant Geographic Market

Views of the Undertakings Involved

40. The RBB Report states that "the relevant market for the supply of outsourced sales staff to pharmaceutical companies appears to be at least as broad as the Republic of Ireland." The RBB Report states that "while particular assignments will be specified for a particular geographic region, each of the CSOs present in the State operates on a national basis." The RBB Report states that "the parties believe that each CSO maintains a national database of candidates and tenders for assignments across the Republic. As such, both pharmaceutical companies and sales representatives are able to work with any CSO active in the State."

Views of the Competition Authority

41. The Authority considers that the relevant geographic market for the provision of outsourced sales representatives to pharmaceutical companies is likely to be as broad as the State. In its questionnaire to the parties' top five customers, the Authority asked whether there is a difference in the price charged by CSOs depending on the region of the State. All pharmaceutical companies contacted by the Authority responded no. Furthermore, all four CSOs currently active in the State operate on a nationwide basis. The Authority has not received any evidence to suggest that CSOs price discriminate by geographic regions within the State.

Conclusion on the Relevant Product and Geographic Market

42. In conclusion, for the purpose of examining the competitive effects of the proposed transaction, the Authority will examine the market for the provision of outsourced sales representatives to pharmaceutical companies in the State.

Market Structure and Concentration

Views of the Undertakings Involved

43. The RBB Report presents the parties' estimates of market shares, proxied by existing headcount. Table 1 below illustrates shares of sales personnel headcount both including and excluding sales representatives employed directly by pharmaceutical companies.

Table 1: Estimated Outsourced Sales Staff Headcount, Republic of Ireland

	Estimated headcount	Share % (including direct employment)	Share % (excluding direct employment)
Ashfield	[…]	[…]%	[…]%
Quintiles	[…]	[…]%	[…]%
Pharmexx Ireland	[…]	[…]%	[…]%
Pharmaforce	[…]	[…]%	[…]%
Total excluding self-supply	[…]	[…]%	100.0%
Self-supply	[…]	[…]%	
Total including self-supply (approx.)	[…]	100.0%	

Source: The RBB Report

44. Table 1 above shows that Ashfield currently accounts for […]% of the outsourced pharmaceutical sales staff employed in the State while Pharmexx Ireland accounts for […]%. The remaining […]% of outsourced sales representatives in the State is accounted for by Quintiles and Pharmaforce.

45. Table 1 also shows that outsourcing accounts for […]% of total sales staff in the State when sales representatives directly employed by pharmaceutical companies are included in the market. On that basis, Ashfield and Pharmexx would have a market share of […]% and […]%, respectively.

Views of the Competition Authority

46. Before assessing the competitive impact of the proposed transaction, the market shares of the parties and their competitors are first examined.

47. The data presented in Table 1 above are based on the parties' best estimates of their competitors' share of the market. In order to present a more accurate picture of the structure of the provision of outsourced sales representatives to pharmaceutical companies market, the Authority requested turnover and head count information from each CSO provider in the State.

48. Market shares in the CSO market based on headcount as collated by the Authority are illustrated in Table 2 below.[8]

Table 2: The Supply of Outsourced Sales Representatives, by Sales Staff Headcount, 2012, the State

Provider	**Number**	**%**
Quintiles	[…]	[…]%
Ashfield	**[…]**	**[…]**
Pharmexx Ireland	**[…]**	**[…]**
Pharmaforce	[…]	[…]
Recruitment Plus	[…]	[…]
Total	**[…]**	**100**

Source: The Competition Authority based on information provided by the Parties, Quintiles, and Pharmaforce.

[8] Unlike the figures in Table 1 above which are based on the parties' best estimates of existing sales staff headcount for their competitors, the market share figures in Table 2 are accurate since they are based on precise information provided by the Parties, Quintiles, and Pharmaforce.

49. Post-transaction, Ashfield would have a market share of […]%. Quintiles would be the […] CSO provider in the State with a market share of […]% with Pharmaforce having a market share of […]%.

50. Market concentration refers to the degree to which production in a particular market or industry is concentrated in the hands of a few large firms. The most commonly used measure of concentration is the Herfindahl-Hirschman index (HHI), which is defined as the sum of the squares of the market shares of all firms participating in the market. The pre-transaction HHI is […] while the HHI post-transaction would be […]. The change in the HHI would be […].

51. The HHI results would put the transaction in Zone C as defined by the Competition Authority's *Merger Guidelines*.[9] In other words, the CSO market in the State post-transaction would be defined as highly concentrated. The *Merger Guidelines* states that "Zone C mergers occur in already highly concentrated markets and more usually be those that raise competitive concerns."[10] HHI calculations are not, however, conclusive in themselves. Rather, HHI calculations provide a screening mechanism which in this case indicates that further investigation and analysis is warranted.

52. Table 3 below presents market share data based on each CSO's annual turnover in the State generated from the supply of sales representatives to pharmaceutical companies.

Table 3: The Supply of Outsourced Sales Representatives, by Turnover (€) %, 2009-2011, the State

Provider	**2009**	**2010**	**2011**
Ashfield	**[…]%**	**[…]%**	**[…]%**
Quintiles	[…]%	[…]%	[…]%
Pharmexx Ireland	**[…]%**	**[…]%**	**[…]%**
Pharmaforce	[…]%	[…]%	[…]%
Total	**100%**	**100%**	**100%**
Total (€, millions)	**[…]**	**[…]**	**[…]**

Source: The Competition Authority based on information provided by the Parties, Quintiles, and Pharmaforce.

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[9] Full details of the HHI are explained in the Competition Authority, 2004, *Notice in Respect of Guidelines for Merger Analysis*, Decision No. N/02/004. This document is available on www.tca.ie.
[10] Ibid 9, paragraph 3.10, page 11.

Note: There is no turnover figure for Recruitment Plus which has only 3 sales representatives. Turnover generated from these three is unlikely greatly to affect the market share calculations.

53. Despite the economic downturn, the total size of the CSO market in the State has grown in recent years from €[…]million in 2009 to just under €[…]million in 2011. One explanation for this growth was provided by a competitor who informed the Authority (in response to a questionnaire) that:

> "[…]"

54. A second competitor informed the Authority that:

> "The CSO market has expanded in recent years as more customers are looking to outsource the hiring of sales staff to CSOs especially when there is a freeze on hiring new sales staff internally."

55. As can be seen in Table 3 above, both Pharmexx Ireland and Pharmaforce have dramatically increased their market share over the period 2009-2011 at the expense of Quintiles and Ashfield. Internal documentation provided by Pharmexx to the Authority also indicates that Pharmexx Ireland has been growing its CSO business in the State in recent years. An internal document provided by Pharmexx entitled "Business Review and Budget 2012, Ireland" dated July 2011 has a SWOT analysis[11] which contains the following quote:

> "[…]"

56. Following the proposed transaction, Ashfield would become the biggest player in the CSO market in the State with a market share of […]%. Quintiles would be the […] CSO provider in the State with a market share of […]% with Pharmaforce having a market share of […]%.

57. The pre-proposed transaction HHI is […] while the HHI post-transaction would be […]. The change in the HHI would be […]. These HHI results would also put the transaction in Zone C as defined by the Competition Authority's *Merger Guidelines*.

58. In conclusion, irrespective of whether market shares are measured by sales staff headcount or turnover, the CSO market in the State post-transaction would be defined as highly concentrated.

Competitive Assessment

Views of the Undertakings Involved

59. In its competitive assessment, the RBB Report examines the scope for the proposed transaction to bring about a lessening of competition via unilateral effects.

60. The RBB Report states that "given that direct employment is likely to be a substitute for outsourcing for pharmaceutical companies, the figures presented in Table 1 above suggest that the proposed transaction will

[11] A SWOT analysis examines a company's strengths, weaknesses, opportunities, and threats.

have a *de minimis* impact on competition in the supply of sales staff to the pharmaceutical sector."

"Product Homogeneity"

61. The RBB Report states that "the service provided by the parties is one of administration and intermediation." The RBB Report states that "CSOs do not produce or control the sales staff that they supply to pharmaceutical companies in the way that firms typically exercise control over the products that they supply." The RBB Report states that "at the point at which a pharmaceutical company tenders for a particular assignment, there exists a pool of suitable candidates within the State, each of those candidates being available to each CSO." The RBB Report states that "CSOs are therefore not able to restrict the supply of particular sales representatives to pharmaceutical companies, but only the supply of sales representatives through their own outsourcing service."

62. The RBB Report states that "the services supplied by each CSO are, to a large extent, homogenous." The RBB Report states that "for pharmaceutical companies different CSOs and direct employment simply represent alternative means of accessing the same pool of potential sales candidates." The RBB Report states that "the identification of suitable sales candidates and employment administration for chosen candidates undertaken by CSOs is to a large extent a commoditised service."

63. The RBB Report states that "this implies that all CSOs are equally well-placed to compete for tenders issued by pharmaceutical companies." The RBB Report states that "because each pharmaceutical company tender will prompt an *ad hoc* search from the population of potential sales candidates, the existing scale of CSOs will have no bearing upon their ability to fulfill each tender." The RBB Report states that "CSOs do not need to hold an exclusive pool of suitable candidates in order to compete for business and, thus, the parties' smaller rivals are at no disadvantage relative to the parties in competing for assignment tenders."

64. The RBB Report states that the degree of competition between CSOs is more equal than might be suggested by the headcount shares presented in Table 1 above. The RBB Report states that "Quintiles and Pharmaforce will continue to represent credible and effective rivals to the merged entity post-merger." The RBB Report states that "while the number of existing CSOs in the State will be reduced from four to three, the behaviour of pharmaceutical companies indicates that, given the commoditised nature of the service provided and the common access to the pool of potential sales candidates, customers do not find it necessary to engage a wide range of suppliers in tenders." The RBB Report states that "even setting aside the constraint from entry and the use of direct employment, no significant lessening of competition amongst existing CSOs can be expected to arise as a result of the proposed transaction."

"Scope for Entry and Expansion"

65. The RBB Report states that "because CSOs do not hold a stock of potential sales candidates but instead source candidates as assignments are tendered, all CSOs, irrespective of their current scale of operation, are able to compete on an equal basis for each tender." The RBB Report states that "in order to compete for contracts CSOs do not need to risk investment in costly capacity but only bear the costs of employing additional sales representatives once a client has committed to take staff

from the CSO." The RBB Report states that "CSOs can thus tailor their scale of operations precisely to their sales, and can readily and rapidly expand their supply to meet demand."

66. The RBB Report states that "in view of the scope for expansion, the parties' existing scale will not confer on them any long-term advantage and smaller rivals could readily expand to accommodate any increase in demand." The RBB Report states that "rivals will therefore be well-placed to exert a credible competitive constraint on the parties post-transaction."

67. The RBB Report further states that "there is a material prospect of new entry since the upfront costs for establishing a CSO business are minimal, with no requirement to make upfront investments in facilities, assets or a large number of employees." The RBB Report states that "due to the low start-up costs, new entrants can become financially sustainable in a short period and at a low scale of operations." The RBB Report states that "there is therefore realistic scope for *de novo* entry into the CSO industry." The RBB Report states that "there are a number of foreign CSOs that could potentially enter the State, including Inventiv Health Inc. in the United States and Apodi Limited in the United Kingdom."

68. Finally, with regards to entry, the RBB Report states that "since there is no requirement for specific familiarity with the pharmaceutical industry, there is scope for more general staff recruitment agencies in the State, such as Sigma Recruitment and Recruitment Plus, to move into the CSO sector." The RBB Report also states that "Pharma Solutions, a direct employment recruitment agency specialising in the pharmaceuticals sector, would also be well-placed to move into the CSO segment in the State."

"Buyer Power"

69. The RBB Report states that "pharmaceutical companies are large, sophisticated buyers and, in the prevailing economic climate, increasingly cost conscious in their general procurement policies." The RBB Report states that "in terms of sales personnel procurement specifically, pharmaceutical companies are, due to direct employment, very well-informed about the employment costs for sales personnel." The RBB Report states that "the customers of CSOs are therefore well aware of the cost of employing sales staff." The RBB Report states that "this information and knowledge puts pharmaceutical companies in a position to resist any attempt by CSOs to raise the cost of outsourced sales personnel."

70. The RBB Report further states that "pharmaceutical companies are well-placed to threaten credibly to switch their business away from CSOs in response to uncompetitive terms." The RBB Report further states that "customers could do so both by switching their sales staff requirements from outsourcing to direct employment and by sponsoring new entry." The RBB Report states that "by establishing relationships with potential entrants, pharmaceutical companies could encourage greater competition within the CSO segment in response to any perceived loss of competition amongst existing CSOs." The RBB Report states that "the CSO business is thus characterised by a degree of buyer power than will further serve to constrain the competitive conduct of the parties following the proposed transaction."

Views of the Competition Authority

71. Assessing the competitive effects of the proposed transaction requires (a) the identification of relevant theories of harm (i.e., how the proposed transaction could result in a substantial lessening of competition) and, (b) the analysis of those theories of harm through the evaluation of the available evidence.

72. For the purpose of assessing the proposed transaction, the Authority identified two relevant theories of harm to be evaluated: coordinated effects and unilateral effects.

Coordinated Effects

73. Coordinated effects occur when the actions of the merged entity together with those of its competitors, either tacitly or explicitly, result in reduced output and/or increased prices to the detriment of consumers. In contrast to unilateral effects, the increase in prices or the reduction in output is profitable for each of them only as a result of the reactions (or non-reactions) of others.

74. The Authority has considered coordinated effects in previous decisions. In its Phase 2 Determination in M/08/011 - Heineken/S&N*,* the Authority stated that:

> "Coordinated effects occur where the proposed transaction changes the nature of competition in the relevant market by making it more likely that the merged entity and some or all of its competitors will engage in co-ordinated interaction to raise prices or decrease output. Such interaction refers to actions that are profitable only as a result of each firm accommodating the reactions of others. Here the main question is whether the merger materially increases the likelihood that firms in the market will successfully coordinate their behaviour or strengthen existing coordination".[12]

75. This implies there are three main questions to address when assessing coordinated effects:

- What are the conditions that must exist for coordinated behaviour to occur?
- Is there evidence of pre-existing vulnerability to coordinated behaviour? and,
- How likely is the merger to have a material impact on coordinated behaviour – i.e., would the proposed transaction make it more likely that tacit or explicit coordinated behaviour will be initiated or that pre-existing coordinated behaviour will be continued?

76. The Authority considers that the proposed transaction will not make it more likely that Ashfield and some or all of its competitors will engage in tacit or explicit coordinated interaction to raise the price of CSO services or otherwise harm competition. This view is based on the following reasons.

[12] Determination in Merger Notification M/08/011 Heineken/Scottish & Newcastle, decision dated 3/10/2008.

Views of Customers

77. The majority of customers contacted by the Authority expressed no concerns about the competitive impact of the proposed transaction. Furthermore, no customer expressed a concern about coordinated behaviour. The Authority is not aware of any evidence to indicate the presence of pre-existing coordinated behaviour in the CSO market in the State.

78. Most customers contacted by the Authority indicated that they invite CSOs to make an offer (either formally through a tender process or informally through a letter) before deciding which company to use. Most customers informed the Authority that they differentiate between rival CSO providers based on two key factors: (a) the total cost of the service (including the fee charged by the CSO provider), and (b) the calibre and experience of the sales candidate(s) put forward for selection.

79. The key views of the nine customers contacted by the Authority are summarised in Table 4 below. As can be seen, eight out of nine customers indicated to the Authority that the majority of their sales representatives are directly employed in-house.[13] Of the two customers that raised a competition concern, one currently employs all of its sales representatives in-house while the other customer employs 93% of its sales staff in-house.

Table 4: Summary of Views of Customers Contacted by Authority

Customer	**% of Sales Staff Employed in-house**	**Competition Concerns: Yes/No**	**Reason Provided**
Customer 1	80%	No	Credible options post-transaction, namely Quintiles, Ashfield, and Pharmaforce.
Customer 2	92%	No	Has used three CSOs since 1 January 2010: Quintiles, Ashfield, and Pharmexx Ireland.
Customer 3	85%	No	Since three CSOs will remain post-transaction, sufficient competition

[13] The precise split between directly employed sales representatives and those sourced from CSOs varies from customer to customer but, on average, is around 80/20.

			should be present.
Customer 4	0%	No	Competition is intense in the CSO market.
Customer 5	100%	No	Competition between the two major CSOs (Ashfield and Quintiles) is intense. If the number of major CSOs was to drop below 2, then we would be very concerned.
Customer 6	65%	No	Competition will remain intense in the CSO market.
Customer 7	83%	No	Can easily switch to Quintiles or Pharmaforce post-transaction should it so wish.
Customer 8	93%	Yes	Overall competitiveness in the market will inevitably be reduced with fewer players.
Customer 9	100%	Yes	Fee charged by Ashfield might rise post-transaction.

Source: The Competition Authority

80. Seven out of the nine customers contacted by the Authority expressed no competition concerns. All seven customers stated that credible alternative CSO providers – sufficient to preserve effective competition post-merger - exist in the State.

81. It is worthwhile examining in detail the views expressed by the two customers that raised a competition concern and also the views expressed

by Customer 4 who currently sources 100% of its sales staff through a CSO.

82. Customer 8 stated that "overall competitiveness in the market will inevitably be reduced with fewer players." When asked whether its negotiating strength would be lessened post-transaction, this customer stated: "Possibly, based on the fact there will be fewer CSOs to negotiate with (could depend on what business model is adopted by the merged entities)." This customer indicated that it currently uses three CSO providers: Pharmaforce, Pharmexx Ireland and Ashfield. Furthermore, this customer stated that it used the services of Quintiles in 2010 and it indicated that it considers Quintiles as a credible alternative to its current CSO providers. Customer 8 also stated that it has in the past used recruitment agencies to hire sales representatives.

83. Customer 9 expressed the view to the Authority that the fee charged by Ashfield might rise post-transaction. This customer informed the Authority that it currently employs 100% of its sales representatives in-house. In the recent past, this customer has used the CSO services of both Ashfield and Pharmexx Ireland. When asked in a follow-up telephone interview by the Authority how it would respond if the fee charged by Ashfield increased post-transaction, this customer stated that it would give more consideration to using the services of either Quintiles or Pharmaforce. This customer stated that it has received tenders in the recent past from Quintiles for the provision of CSO services and that the fee was competitive. This customer also stated that it would consider developing more in-house sales representative positions should the fee charged by Ashfield increase post-transaction. Finally, this customer indicated that it also has the option of using recruitment agencies to hire sales staff post-transaction. However, this customer expressed the view that it is better to recruit sales staff directly or source sales candidates through a CSO rather than going through a recruitment agency.

84. Customer 4 currently sources 100% of its sales staff through a CSO.[14] This customer informed the Authority that the reason for this is that "dedicated (in-house) sales people are an expensive resource and CSO services offer an affordable way for reaching customers in regions. Using a shared service (with other manufacturers) allows for shared costs." This customer also indicated that all services provided by its current CSO could be achieved in-house if affordable. This customer stated that it has no competition concerns with the proposed transaction because it has a "very structured tendering process" and, in its view, the competitive environment will remain the same post-transaction.

85. The views of customers can be summarised as follows:

- Pharmaceutical companies employ the majority of their sales representatives directly in-house with a minority sourced through CSOs;

- All nine customers stated that credible alternative CSO providers exist in the State; and

[14] This comprises three sales representatives and one sales manager plus an administrative assistant. They do not work exclusively for this customer: it pays for 60% of their time and the other 40% is paid for by other customers.

- No competition concerns were expressed by seven out of the nine customers contacted by the Authority;

- Two customers expressed a competition concern. They indicated that they would consider alternative CSO providers such as Quintiles and Pharmaforce post-transaction.

Asymmetric Market Shares and Short-Term Contracts

86. Market shares are asymmetric and unstable (see Table 3 above). Post-transaction, Ashfield will have a market share of […]%, Quintiles […]% and Pharmaforce […]%. Both Pharmexx Ireland and Pharmaforce dramatically increased their market share in the State between 2009 and 2011 at the expense of Ashfield and Quintiles. Post-transaction, it appears that Pharmaforce has more of an incentive to compete against Ashfield and Quintiles in order to gain market share rather than engage in co-ordinated interaction with its competitors, either tacitly or explicitly.

87. It is also appears relatively easy for smaller CSO providers such as Pharmaforce to gain market share given that contracts between CSOs and their customers are short-term and also because there is a tendering process for the awarding of such contracts. This is highlighted in an internal document provided to the Authority by Pharmexx entitled "Board Meeting 8 February 2012" which contains the following quote:

> "[…]"

88. Similarly, an internal document provided by United Drug entitled "Project Zeta – Board Review Paper" dated July 2012 contains the following quote regarding contracts:

> "[…]"

Bilateral Negotiations between CSOs and Customers

89. The fee charged by CSO providers is typically set on a bilateral basis through negotiations with the customer which does not suggest price transparency. Customers typically invite a CSO to submit a tender for the business. Negotiations between a CSO provider and customer typically cover a number of issues including the salary to be paid to the sales representative, the benefits applicable to that sales representative such as the level of health insurance and type of car used for his/her work, and the fee charged by the CSO provider. The specific details of each tender and the negotiations that follow are unlikely to be known to competing CSOs.

Views of Competitors

90. Both Quintiles and Pharmaforce informed the Authority that they have no competition concerns with the proposed transaction.[15]

91. […].[16]

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[15] The Authority recognises, however, that the views of competitors may or may not be consistent with the interests of consumers. See page 43 of "ICN Investigative Techniques Handbook for Merger Review", International Competition Network, June 2005.

[16] […].

92. Pharmaforce expressed the view that the level of competition in the CSO market will not change post-transaction since there will still be three CSO companies active in the State. […]. Pharmaforce expressed the view that Quintiles, Ashfield, and Pharmexx Ireland are all close competitors to Pharmaforce. Pharmaforce stated that it has grown its business over the last three years but is unsure about its market share since no data is available. As can be seen in Table 3 above, Pharmaforce's market share (based on turnover) has increased from […]% to […]% between 2009 and 2011.

93. The Authority considers that the presence of both Quintiles and Pharmaforce will act as a significant competitive constraint on Ashfield post-transaction. All nine customers contacted by the Authority listed both Quintiles and Pharmaforce as credible alternative CSO providers in the State.

Sophisticated Buyers of CSO Services

94. Pharmaceutical companies may well be able to resist any attempt by CSOs to raise the cost of outsourced sales personnel post-transaction. Pharmaceutical companies have detailed knowledge about employing sales personnel, including their salaries and abilities. As noted above, all nine customers contacted by the Authority stated that the majority of their sales representatives are directly employed in-house. Furthermore, all nine customers indicated that there is no specific aspect of the service provided by a CSO that a customer is unable to provide itself in-house. Thus, should the price charged by CSOs increase post-transaction, pharmaceutical companies appear to have the option of employing more sales staff directly. Indeed, one customer, although concerned about the competitive effect of the merger, informed the Authority that all of its sales representatives are currently employed in-house.

Recruitment Agencies as a Potential Competitive Constraint Post-transaction

95. Recruitment agencies specialising in the pharmaceutical industry may act as a competitive constraint on CSO providers post-transaction. Four out of the nine customers contacted by the Authority indicated that they had used recruitment agencies in the recent past in order to hire sales representatives. However, the other five customers indicated that they had not used recruitment agencies to hire sales staff. Furthermore, both Quintiles and Pharmaforce informed the Authority that they do not consider recruitment agencies to be competitors.[17]

96. The Authority sent a questionnaire to six recruitment agencies, of which two (Pharma Solutions and Recruitment Plus) provided a detailed response.[18]

97. […].

98. […].

99. It is significant that Pharmexx appears to view recruitment agencies to be a potential competitive threat to Pharmexx Ireland. An internal document

[17] […].

[18] Two out of the six recruitment agencies responded that they have no views on the proposed transaction since they do not provide recruitment services in the pharmaceutical sector. The remaining two recruitment agencies did not respond to the Authority's questionnaire.

provided by Pharmexx entitled "Business Review and Budget 2012, Ireland" dated July 2011 has a SWOT analysis which contains the following quote:

"[…]."

100. The Authority considers that it is possible that some recruitment agencies may be able to exert a potential competitive constraint on CSO providers post-transaction.

Entry

101. The parties state in the notification that "each of Inventiv Health Inc, Apodi, North 51, and Chase and Star Medical has considered entering the Irish market." However, no firm evidence was provided by the parties to support this statement apart from Pharmexx informing the Authority that […] had expressed an interest in buying Pharmexx. […]

102. The following quote taken from an internal document provided by United Drug entitled "Board Review Paper" dated July 2012 suggests that entry barriers into the CSO market may be relatively low:

"[…]"

103. The fact that contracts between CSO providers and customers are typically only twelve months in duration may also make entry easier. It is also the case that both Pharmaforce (which commenced operations in 2006) and Pharmexx Ireland (which commenced operations in January 2008) have grown their market share since they entered the CSO market in the State.

104. On balance, although the parties have not provided sufficiently detailed information to establish that entry in response to a modest price increase would be timely, likely and sufficient to prevent any harm to competition, the Authority considers that there is a realistic prospect that entry could occur at some point in the future should prices rise sufficiently.

105. There may also be scope for more general staff recruitment agencies in the State to enter the CSO market. As noted above, […]. Thus, entry by general staff recruitment agencies into the CSO market in the State appears to be likely.

Conclusion on Coordinated Effects

106. The Authority considers that the proposed transaction will not make it more likely that United Drug, through its wholly owned subsidiary Ashfield, and some or all of its competitors will engage in coordinated interaction, either tacitly or explicitly.

Unilateral Effects

107. Unilateral effects arise when, as a result of a merger, the merged entity would find it profitable to raise prices, irrespective of the reactions of its competitors, to the detriment of consumers. In this instance, the question is whether, post acquisition, United Drug, through its wholly owned subsidiary Ashfield, would be in a position unilaterally to raise the fee charged to pharmaceutical companies for the provision of CSO services.

108. Notwithstanding that the CSO market in the State is highly concentrated, the Authority considers that, post-transaction, United Drug, through its wholly owned subsidiary Ashfield, will not have the ability or the incentive unilaterally to exercise market power or lessen competition in the market for the provision of outsourced sales representatives to pharmaceutical companies in the State for the following reasons.

Views of Customers

109. As described in detail above, no competition concerns were expressed by seven out of the nine customers contacted by the Authority. Of the two customers that expressed a competition concern, both indicated that they would consider using alternative CSO providers such as Quintiles and Pharmaforce post-transaction.

Closeness of Competition

110. The extent to which Ashfield and Pharmexx Ireland are close competitors significantly affects the strength of the competitive constraint exerted by other CSO providers. That is, if Ashfield and Pharmexx Ireland are close competitors, then there is a greater prospect of Ashfield being in a position to sustain price increases post-transaction. Conversely, if Ashfield and Pharmexx Ireland are not close competitors then there is a lesser prospect of a price increase being sustainable post-transaction.

111. In 2009, United Drug commissioned Ballington Hall Research, consultants to the pharmaceutical and healthcare industries, to conduct a review of the CSO market in the State. As part of the review, […] current customers and […] previous customers of Ashfield were interviewed by Ballington Hall Research between October 2009 and December 2009. The following quotes are taken from the final report dated June 2010 that was presented to United Drug by Ballington Hall:

> "[…]…When the research project began in October 2009, Alchemy and Pharmexx were two different companies…After fieldwork had been completed it was announced in the Irish Examiner that Pharmexx and Alchemy has merged. […]"

112. It is clear from this review of the CSO market undertaken in 2009 that Ashfield and Quintiles were perceived by customers to be each other's closest competitors in the State while Pharmexx Ireland was a distant competitor. It is worth noting that Pharmexx Ireland only started providing CSO services in the State in January 2008. Even though the market share of Quintiles has […] between 2009 and 2011, the Authority considers that Quintiles continues to be a close competitor of Ashfield in the CSO market. All nine customers contacted by the Authority indicated that they would consider using Quintiles post-transaction. Quintiles operates on a nationwide basis in the CSO market and it currently employs […] sales representatives on permanent full-time contracts. It is currently the […] CSO provider in the State, as measured by turnover (see Table 3 above), and […] as measured by headcount (see Table 2 above).

113. The Authority considers that Pharmaforce will be a competitor to Ashfield in the provision of CSO services in the State post-transaction. Like Quintiles, Pharmaforce operates on a nationwide basis and it currently employs […] sales representatives on a full-time basis. Pharmaforce, although the […] player in the CSO market, has grown its market share in

the State from […]% in 2009 to […]% in 2011. Significantly, all nine customers contacted by the Authority indicated that they would consider using Pharmaforce post-transaction.

114. Although Pharmaforce currently employs only […] sales representatives on a full-time basis, the Authority considers that Pharmaforce can easily expand that number should it win more contracts with pharmaceutical companies. As explained above, CSOs maintain a list of sales representatives who are available for work at any given time. These are referred to as free agents. As noted above, United Care informed the Authority that it estimates that there are approximately 410 free agents in the State not affiliated with either a CSO or a pharmaceutical company. Pharmexx informed the Authority that it estimates the total number of free agents to be around […]. […].

115. As noted above, Ashfield does not retain sales representatives on a full time basis but instead recruits sales staff on an ad hoc basis upon winning an assignment from a customer. Ashfield employs sales staff only in the event that these sales representatives are accepted by a pharmaceutical company. Thus, sales representatives currently employed by Ashfield will be available to work with other CSOs once their current contract (which typically lasts only twelve months) expires, assuming it is not renewed by the customer.

116. Given that the recent economic downturn is likely to have caused pharmaceutical companies to reduce the number of sales staff employed directly[19], the Authority considers that there is likely to be a significant number of free agents who are available for work in the State. Thus, rival CSO providers such as Quintiles and Pharmaforce should be able to expand output quickly by hiring more sales representatives in response to an increase in demand post-transaction.

Sophisticated Buyers of CSO Services

117. As noted above, pharmaceutical companies may well be able to resist any attempt by CSOs to raise the cost of outsourced sales personnel post-transaction. This should be as true with respect to a unilateral effect as to a coordinated effect.

Views of Competitors

118. As described in detail above, both Quintiles and Pharmaforce informed the Authority that they have no competition concerns with the proposed transaction. The Authority considers that the presence of both Quintiles and Pharmaforce will act as a significant competitive constraint on Ashfield post-transaction. All nine customers contacted by the Authority listed both Quintiles and Pharmaforce as credible alternative CSO providers in the State.

Entry

119. As discussed above, the Authority considers that there is a realistic prospect that entry into the CSO market in the State could occur at some point in the future should prices rise sufficiently. In addition, entry by general staff recruitment agencies into the CSO market in the State appears to be likely.

[19] A number of customers confirmed this fact in their response to the Authority's questionnaire.

Conclusion on Unilateral Effects

120. The market share data and HHI calculations set out above indicate that the CSO market in the State will be highly concentrated post-transaction. However, notwithstanding that the number of CSO providers active in the State will decline from four to three, the Authority considers that United Drug, through its wholly owned subsidiary Ashfield, will not have the ability or the incentive unilaterally to impose price increases post-transaction.

121. The views of customers and competitors and the other competitive factors described in detail above indicate that both Quintiles and Pharmaforce will be credible competitive constraints and that Ashfield should not be able unilaterally to increase prices or otherwise harm competition post-transaction.

Conclusion

122. In light of the above, the Authority concludes that the proposed transaction will not lead to a substantial lessening of competition in the market for the provision of outsourced sales representatives to pharmaceutical companies in the State.

DETERMINATION

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by United Care Limited, a wholly-owned subsidiary of United Drug PLC, of Pharmexx GmbH and its interests in 39 subsidiary companies, including Pharmexx Ireland (Sales Solutions) Limited, will not be to substantially lessen competition in markets for goods or services in the State, and accordingly, that the acquisition may be put into effect.

For the Competition Authority

Stephen Calkins

Member of the Competition Authority

Director, Mergers Division