



**DETERMINATION OF MERGER NOTIFICATION
M/12/027 – Uniphar/CMR**

Section 22 of the Competition Act 2002

Proposed acquisition by Uniphar plc of Cahill May Roberts Limited

Dated 30 April 2013



The Competition Authority
An tÚdarás Iomaíochta

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1. SECTION ONE: INTRODUCTION

Executive Summary

- 1.1 The notified transaction concerns the proposed acquisition by Uniphar plc of sole control of Cahill May Roberts Limited.
- 1.2 At the conclusion of the Phase 1 investigation, the Authority was unable to form the view that the result of the proposed acquisition would not be to substantially lessen competition in any markets for goods or services in the State. The Authority therefore proceeded to a full investigation (Phase 2).
- 1.3 Following an intensive full investigation, which included ongoing contacts with the parties; a survey of pharmacies carried out by Ipsos MRBI on behalf of the Authority; obtaining the views of competitors and suppliers of the parties; obtaining the views of industry representative bodies, the Department of Health and the Health Service Executive; and econometric analysis of pricing data, the Authority formed the view that the transaction will not substantially lessen competition in markets for goods or services in the State.

The Notification

1.4 On 12 December 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 Uniphar plc ("Uniphar") of Cahill May Roberts Limited ("CMR"), a wholly owned subsidiary of Celesio AG.

The Undertakings Involved

The Acquirer – Uniphar

1.5 Uniphar, headquartered in Dublin, has two main business divisions: Uniphar Wholesale and Allphar Services Limited ("Allphar"), a wholly-owned subsidiary of Uniphar.

Uniphar Wholesale

1.6 Uniphar Wholesale is a full-line wholesaler of pharmaceutical, healthcare, and veterinary products to pharmacies, hospitals and veterinary surgeons in the State. Due to licensing requirements, Uniphar Wholesale does not sell to customers outside the State. Uniphar operates four storage and distribution depots in Dublin, Cork, Sligo and Limerick.

1.7 Uniphar Wholesale's activities encompass the following three product categories:

- The wholesale supply of pharmacy-only human pharmaceutical drugs including both prescription medicines and pharmacy-only over-the-counter ("OTC") medicines;
- The wholesale supply of front-of-counter and non-pharmacy only products. This includes health and beauty products such as lip balm, deodorant, moisturiser and nail polish, and human pharmaceutical drugs such as paracetamol which are not confined to sales from pharmacies; and
- The wholesale supply of veterinary drugs.

Allphar

1.8 Allphar is a pre-wholesaler of pharmaceutical products, healthcare products, veterinary products, and healthcare equipment acting as sole agent and distributor in the State on behalf of manufacturers.¹ Allphar's core function is to warehouse and distribute pharmaceutical, healthcare, and veterinary products on behalf of its client companies. It also provides additional services including marketing and administrative support. Allphar mainly supplies to full-line pharmaceutical wholesalers, community pharmacies and hospitals.

1.9 Allphar's pre-wholesale activities encompass the following four product categories:

- pharmacy-only human pharmaceutical drugs including both prescription medicines and pharmacy-only OTC medicines;

¹ Section 2 below describes in detail the role and functions of a pre-wholesaler.

- front-of-counter and non-pharmacy only products;
 - veterinary drugs; and,
 - medical and surgical supplies (e.g., feeding tubes, surgical equipment, etc).
- 1.10 Allphar is also involved in the direct supply of pharmaceutical products to pharmacies where it acts on behalf of manufacturers to distribute some of their products direct to pharmacies. This is referred to as direct-to-pharmacy ("DTP") sales.
- 1.11 For the year ending 31 December 2011, Uniphar's worldwide turnover was €614 million. Uniphar's turnover in the State for the same period was €[...].

The Vendor – Celesio AG

- 1.12 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. Celesio AG currently owns the Unicare/Doc Morris chain of 73 pharmacies located across the State. The Unicare/Doc Morris chain is not part of the proposed transaction and the Authority understands that it will continue to be owned by Celsio AG post-transaction.

The Target - CMR

- 1.13 CMR, headquartered in Dublin, has two business divisions: CMR Wholesale and Movianto.

CMR Wholesale

- 1.14 CMR Wholesale is a full-line wholesaler of pharmaceutical, healthcare, and veterinary products to pharmacies, hospitals and veterinary surgeons in the State. CMR Wholesale operates three storage and distribution depots in Dublin, Cork and Sligo.
- 1.15 CMR Wholesale's activities encompass the following three product categories:
- The wholesale supply of pharmacy-only human pharmaceutical drugs including both prescription medicines and pharmacy-only OTC medicines;
 - The wholesale supply of front-of-counter and non-pharmacy only products. This includes health and beauty products such as lip balm, deodorant, moisturiser and nail polish, and human pharmaceutical drugs such as paracetamol which are not confined to sales from pharmacies; and
 - The wholesale supply of veterinary drugs.

Movianto

- 1.16 Movianto is a pre-wholesaler of pharmaceutical products, healthcare products, veterinary products, and healthcare equipment acting as sole agent and distributor in the State on behalf of manufacturers.

Movianto's core function is to warehouse and distribute pharmaceutical, healthcare, and veterinary products on behalf of manufacturers. Movianto supplies to full-line pharmaceutical wholesalers, community pharmacies, hospitals and GPs.

1.17 Movianto's pre-wholesale activities encompass the following four product categories:

- pharmacy-only human pharmaceutical drugs including both prescription medicines and pharmacy-only OTC medicines;
- front-of-counter and non-pharmacy only products;
- veterinary drugs; and,
- medical supplies (e.g., wound management systems, orthopaedic systems, etc).

1.18 Movianto is also involved in the DTP supply of pharmaceutical products to pharmacies where it acts on behalf of manufacturers to distribute some of their products direct to pharmacies.

1.19 For the year ending 31 December 2011, CMR's worldwide turnover was €[...]. CMR's turnover in the State for the same period was €[...].

Rationale for the Notified Transaction

1.20 The parties state in the notification that:

"Various developments in the pharmaceutical sector, including increasing parallel imports and significant reductions in the amounts payable by the State under pricing arrangements, have affected the viability of full-line pharmaceutical wholesalers' businesses. In light of HSE/State spending cuts, the patent cliff and the impending legislation on reference pricing, it is clear that the Irish market will not be able to sustain three full-line wholesalers in the future. The recent and expected changes in the wholesaling model are detailed in the January 2012 ESRI report – "Delivery of Pharmaceuticals in Ireland – Getting a Bigger Bang for the Buck."

"The proposed transaction will provide Uniphar with sufficient scale to enable it to withstand future challenges better. It will also allow Uniphar to utilise current spare capacity at its Citywest facility. The proposed transaction represents a natural evolution of this sector in light of these changes and will lead to the combination of two complementary distribution networks, with consequent significant (and necessary) savings in distribution costs and other economics of scale."

"In relation to Celesio's rationale for this divestment, it has decided to focus on its core business (pharmaceutical wholesale and retail) internationally. This has led to the disposal of Celesio's non-core

businesses in 2011-2012. The proposed sale of CMR is due to the certain specifics such as negative government intervention, increasing convergence between wholesale and pre-wholesale among other things.”

The Procedure

Preliminary Investigation (“Phase 1”)

Contacts with the Notifying Parties

- 1.21 On 12 December 2012, in addition to the notification, an economic report by Professor Francis O’Toole of Trinity College Dublin, commissioned on behalf of the parties, was submitted to the Authority (“The O’Toole Report #1”).²
- 1.22 On 19 December 2012, the Authority issued an informal information request to both Uniphar and CMR requesting internal documentation. Responses were received by the Authority from both parties.
- 1.23 On 10 January 2013, the Authority served a Requirement for Further Information on each of Uniphar and CMR pursuant to section 20(2) of the Act. This automatically suspended the procedure for the Authority’s Phase 1 assessment.
- 1.24 Upon receipt of the responses to the Requirements for Further Information, the “appropriate date” (as defined in section 19(6) of the Act) became 15 February 2013.³
- 1.25 On 14 February 2013, the Authority visited Uniphar’s distribution depot in Citywest, Co. Dublin. On 18 February 2013, the Authority visited CMR’s distribution depot in Chapelizod, Co. Dublin. PowerPoint presentations were made separately to the Authority by both parties. These site visits were carried out to inform the Authority’s understanding of the business activities of Uniphar and CMR.
- 1.26 During the Phase 1 investigation, the Authority requested and received, on an on-going basis, further information and clarifications from the notifying parties.
- 1.27 On 11 March 2013, the parties submitted a note by Professor Francis O’Toole (“The O’Toole Report #2”) in response to issues raised by the Authority in a meeting with the parties dated 8 March 2013.⁴

Third Party Submissions

- 1.28 Two third party submissions were received by the Authority during the Phase 1 investigation. Issues raised in the third party submissions were investigated as part of the review process.

[...]

² Professor Francis O’Toole, “Uniphar’s Proposed Acquisition of Cahill May Roberts”, 12 December 2012.

³ The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.

⁴ Professor Francis O’Toole, “Analysis of Potential Coordinated Effects”, 11 March 2013.

1.29 [...] the retail pharmacy market in the State. [...] expressed the following concern:

“[...]”

[...]

1.30 [...] did not make a written submission but instead made an oral submission in a meeting with the Authority.

1.31 [...] informed the Authority that there are currently approximately 1,700 pharmacies active in the State. [...]

Contacts with Third Parties

1.32 During the Phase 1 investigation, the Authority contacted various third parties. These contacts by the Authority with third parties included:

- Information and data requests to United Drug, a full-line pharmaceutical wholesaler active in the State, on an on-going basis;
- circulation of questionnaires (administered by Ipsos MRBI on behalf of the Authority) to community and hospital pharmacies in the State;
- circulation of questionnaires to eighteen pharmaceutical manufacturers taken from separate lists provided to the Authority by both Uniphar and CMR of their top 10 human pharmaceutical drugs suppliers in the State;
- circulation of questionnaires to eleven short-line wholesalers/parallel importers currently active in the State;
- circulation of questionnaires to five logistics service providers (“LSP”) currently active in the State;
- circulation of questionnaires to three pharmacy buying groups active in the State;
- telephone interviews with three representative bodies: the Irish Pharmacy Union (“IPU”), the Irish Pharmaceutical Healthcare Association (“IPHA”), and the Association of Pharmaceutical Manufacturers in Ireland (“APMI”);
- face-to-face interview with the Department of Health and the Health Service Executive (“HSE”);
- telephone interview with the Irish Medicines Board;
- circulation of questionnaires to ten veterinary surgeons taken from separate lists provided to the Authority by both Uniphar and CMR of their top 5 veterinary drugs customers in the State;
- telephone interviews with four manufacturers of veterinary drugs who currently use the pre-wholesale services of Uniphar or CMR; and,

- telephone interviews with six manufacturers of medical supplies in the State who currently use the pre-wholesale services of either Uniphar or CMR.

Questionnaires to Pharmacies

1.33 A survey of pharmacies located in the State was carried out by Ipsos MRBI on behalf of the Authority. A dual methodology was employed by Ipsos MRBI incorporating the self-completion of a written questionnaire followed by a face-to-face interview. 198 pharmacies in total were contacted by Ipsos MRBI, of which 77 responded to the survey. Table 1 below indicates the response rate for independent community pharmacies, pharmacies that are part of a retail chain, and hospital pharmacies.

Table 1: Survey of Pharmacies: Response Rate

Pharmacy Type	Total Contacted	Completed	Response Rate
Independent Pharmacies	151	60	40%
Part of a Pharmacy Chain	33	11	33%
Hospital Pharmacies	14	6	43%

Source: The Authority

1.34 Of the 77 respondents to the survey, 39% are located in Munster, 23% in Dublin, 23% in the rest of Leinster, and 14% in Connacht/Ulster. The key findings of the survey are reported in Section five below.

Contacts with Expert Economist and Expert Econometrician

1.35 During the Phase 1 investigation, the Authority retained the expert economic services of Professor Stephen Davies of the University of East Anglia in the United Kingdom. The Authority also retained an expert econometrician, Professor Patrick Paul Walsh of University College Dublin, to carry out an econometric analysis of pricing data provided by the merging parties. The results are reported in Section five below. Although the Authority benefited from the assistance of these experts, it is the Authority alone that made and is responsible for the views expressed in this Determination.

Phase 1 Determination

1.36 Having considered all the available information in its possession at the time, the Authority was unable to form the view at the conclusion of the Phase 1 investigation that the result of the proposed acquisition would not be to substantially lessen competition in any markets for goods or services in the State.

1.37 Accordingly, on 13 March 2013, the Authority determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation under section 22(2) of the Act.

Full Investigation ("Phase 2")

Contacts with the Notifying Parties

1.38 On 19 March 2013, the Authority issued an informal information request to both Uniphar and CMR. Responses were received by the Authority from both parties, including a note by Professor Francis O'Toole ("The O'Toole Report #3") in response to issues raised by the Authority in its letter of 19 March 2013.⁵

1.39 During the Phase 2 investigation, the Authority requested and received, on an on-going basis, further information and clarifications from the notifying parties.

Third Party Submissions

1.40 Three third party submissions were received by the Authority during the Phase 2 investigation. Issues raised in the third party submissions were investigated as part of the review process.

[...]

1.41 [...], attaching a copy of the third party submission it made to the Authority during the Phase 1 investigation, made the following request:

"[...]"

[...]

1.42 [...] submission consisted solely of the following quote taken from a report written by the Economic and Social Research Institute entitled "Delivery of Pharmaceuticals in Ireland: Getting a Bigger Bang for the Buck", dated January 2012:

"The wholesale function is an important bridge between the manufacturer and the pharmacist. The evidence suggests that there is vigorous competition between the three full-line wholesalers. The market appears to work well. Government intervention has consisted primarily of clawing back rents through a reduction in the wholesale margin in the distribution chain that were largely accruing to the pharmacist not the wholesaler. While it is the case that the current recession and policy moves have placed wholesalers under financial pressure, this is insufficient reason to change the wholesalers' current business model. Many other sectors are experiencing falling profits and demand. Government policy needs to create the conditions for the overall growth of the economy, not come to the

⁵ Professor Francis O'Toole, "Uniphar and Francis O'Toole comments on the risk of coordinated behaviour post-transaction with respect to service quality", 27 March 2013.

assistance of every sector that may be in difficulty with tailor made interventions.”

[...]

- 1.43 [...] submission related primarily to employment issues in Uniphar which the Authority does not consider to be relevant to its examination of the likely competitive impact of the proposed transaction.

Contacts with Expert Economist and Expert Econometrician

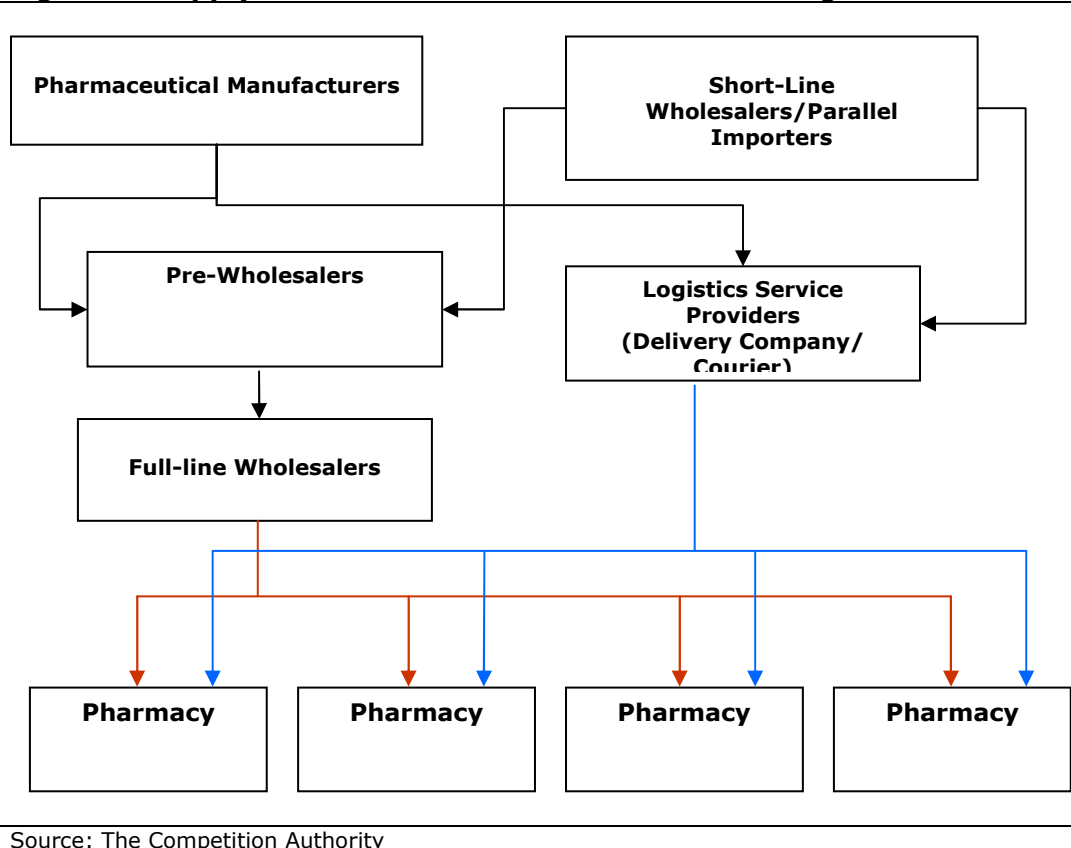
- 1.44 During the Phase 2 investigation, the Authority continued to discuss relevant issues with Professor Stephen Davies. On 26 April 2013, the Authority received a final written econometric report from Professor Patrick Paul Walsh. The results are reported in Section five below.

2. SECTION TWO: INDUSTRY BACKGROUND – PHARMACEUTICAL WHOLESALING

- 2.1 A pharmaceutical wholesaler acts as a middleman between the pharmaceutical manufacturer and the pharmacy. Pharmaceutical wholesalers obtain products from pharmaceutical manufacturers (or their pre-wholesale agents), store those products in anticipation of pharmacy demand, and then sell and deliver the desired quantity of products. Pharmaceutical wholesalers supply four main categories of product:
- Pharmacy-only human pharmaceutical drugs, for which a doctor's prescription is required;
 - Pharmacy-only OTC human pharmaceutical drugs;
 - Unrestricted OTC human pharmaceutical drugs which can be sold in any type of retail outlet; and
 - Front-of-counter and non-pharmacy only products (i.e., non-medicinal products).
- 2.2 To compete effectively in its local retail market, a pharmacy must meet the service demands of its customers as quickly as possible. Thus, a pharmacy must be able to supply a wide range of human pharmaceutical drugs as quickly as possible. This makes the fast, efficient distribution of human pharmaceutical drugs from wholesaler to pharmacy an important feature of the pharmacy sector. The ease with which end consumers can obtain human pharmaceutical drugs from a pharmacy is dependent on the ability of wholesalers to deliver such products quickly and efficiently. Pharmaceutical wholesalers must therefore operate fast and efficient ordering, loading and transportation systems. The survey of pharmacies carried out by Ipsos MRBI on behalf of the Authority confirmed that the quality of the delivery service is an important factor in determining the choice of pharmaceutical wholesaler by a pharmacy.
- 2.3 Figure 1 below illustrates the typical supply chain for human pharmaceutical drugs in the State.⁶

⁶ There are, however, exceptions to this typical supply chain. For example, hospital pharmacies generally purchase human pharmaceutical drugs either direct from manufacturers (via the latter's chosen LSP) or through a pre-wholesaler.

Figure 1: Supply Chain for Human Pharmaceutical Drugs in the State



Source: The Competition Authority

Full-line Wholesalers

- 2.4 The wholesaling of human pharmaceutical drugs in the State is primarily carried out by full-line wholesalers, who are authorised and regulated by the Irish Medicines Board. Full-line wholesalers carry an extensive range of products, in excess of 10,000 individual items or stock keeping units (SKUs).⁷ Full-line wholesalers generally deliver their products twice daily during the week and once on a Saturday to pharmacies from a small number of distribution depots.⁸
- 2.5 Individual pharmacies, whether community or hospital, are unable to stock the variety of pharmaceutical products that a full-line wholesaler carries due to storage space constraints. Wastage is also likely to be a factor since a pharmacy may not be able to predict demand with great accuracy. Full-line wholesalers are better able to manage fluctuations in demand and, by responding quickly to pharmacy orders, they reduce the need of pharmacies to carry a large inventory of products.
- 2.6 Pharmacies send their orders to full-line wholesalers electronically. There is a short lead time for ordering. The software of each wholesaler interfaces with that of each pharmacy and the entire electronic ordering system operates on a common protocol, as a standard recognised code is assigned to each product by the IPU. When a pharmacy places an order electronically, the full-line

⁷ A SKU is a number or code used to identify each unique product for sale.

⁸ This is the case when a full-line wholesaler is in the position of being a pharmacy's primary full-line wholesale supplier of human pharmaceutical drugs. When a full-line wholesaler is in the position of being a pharmacy's secondary full-line wholesale supplier, the number of deliveries is generally only once per day.

wholesaler's IT system establishes whether each ordered product is in stock. A list of products that are not in stock is then transmitted back to the pharmacist almost instantaneously. The pharmacist can then send that part of his order, via the same system, to a different full-line wholesaler.

- 2.7 The electronic ordering system allows a pharmacy to instantly order from any full-line wholesaler, at no additional cost to the pharmacy. The objective is to ensure an efficient and effective response to customers. Each full-line wholesaler keeps a record of the orders processed by its system, and each pharmacy keeps a record of the orders it places and receives. However, the electronic ordering system is independent of all full-line wholesalers, who cannot access information relating to orders placed by pharmacists with competing full-line wholesalers.
- 2.8 Pharmacies typically use two full-line wholesalers: a primary full-line wholesaler that supplies most of the pharmacy's needs and a secondary full-line wholesaler that is used if there are supply problems with the primary wholesaler.⁹ Competition between full-line wholesalers takes place with respect to two factors: discounts and service quality.
- 2.9 The level of the discount given by a full-line wholesaler to a pharmacy depends on a number of factors including:
- the type of products purchased;¹⁰
 - the total value of purchases made by the pharmacy;
 - adherence to credit terms whereby the pharmacy receives a higher discount by paying bills within a certain period of time (e.g., 0, 30, 60 days);
 - whether or not loan financing has been provided to the pharmacy; and
 - individual circumstances which will affect the bargaining strength of the pharmacy in negotiations with the full-line wholesaler.
- 2.10 Full-line wholesalers also compete on service quality, in terms of the range of human pharmaceutical products stocked and the frequency, speed and efficiency of their delivery service.

Pre-wholesalers

- 2.11 Full-line wholesalers also act as agents on behalf of pharmaceutical manufacturers and distribute these firms' products to competing full-line wholesalers (who in turn supply these products to pharmacies), community pharmacies and hospital pharmacies. This business is referred to as "pre-wholesaling". Rather than operate their own distribution operation, many pharmaceutical manufacturers contract this function out to an agent, who provides a full range of services,

⁹ The Authority understands that on average pharmacies purchase approximately 90% of their supplies (by value) of human pharmaceutical drugs from their primary full-line wholesaler.

¹⁰ Some human pharmaceutical drugs fall outside the discount criteria (e.g., High Tech Drugs).

including storage, marketing, invoicing and delivery. Pharmaceutical manufacturers pay a separate fee for pre-wholesaling services.

Short-Line Wholesalers/Parallel Importers¹¹

2.12 Short-line wholesalers/parallel importers represent an alternative distribution model whereby they carry a much smaller inventory of human pharmaceutical products (around 100-500 SKUs) and deliver with less frequency than full-line wholesalers. Market inquiries confirmed that short-line wholesalers/parallel importers deliver once per day and, in some cases, delivery is made the next working day.¹² Many of the human pharmaceutical products sold by short-line wholesalers are parallel imported from wholesalers located in the European Union when arbitrage opportunities arise, for example as a result of currency fluctuations.

Direct-to-Pharmacy

2.13 Another alternative model of distribution is direct-to-pharmacy ("DTP") whereby a pharmaceutical manufacturer uses a LSP, which may be a full-line wholesaler, to distribute its products directly to a pharmacy. The LSP does not take title of the human pharmaceutical drugs since the pharmaceutical manufacturer deals directly with the pharmacy. The pharmaceutical manufacturer sets the price and other terms of supply (e.g., the frequency of delivery) to the pharmacy and pays the LSP (or full-line wholesaler) a fee for delivering the product. Thus, in this context, full-line wholesalers compete with LSPs for the business of the pharmaceutical manufacturer.

2.14 Market inquiries by the Authority confirmed that DTP sales by pharmaceutical manufacturers tend to be confined to specific types of human pharmaceutical drugs such as products sold under the High Tech Drug Scheme and cold chain products. It should be noted, however, that DTP sales have grown significantly in recent years, as detailed in Section 4 below.

Setting the Price of Human Pharmaceutical Drugs in the State¹³

2.15 The price of human pharmaceutical drugs in the State is tightly regulated. The State is involved at each stage of the price-setting process:

- a) determination of the ex-factory price;
- b) application of the wholesale mark-up;
- c) application of the retail mark-up and dispensing fees; and,
- d) application of VAT.

2.16 The vast majority of retail pharmaceutical sales in the State are reimbursable by the HSE under the General Medical Services ("GMS")

¹¹ The term "parallel importer" is synonymous with the term "short-line wholesaler".

¹² This is partly dependent on the location of the pharmacy with pharmacies in rural areas more likely to receive next day delivery.

¹³ Chapter 4 of the Economic and Social Research Institute's report entitled "Delivery of Pharmaceuticals in Ireland: Getting a Bigger Bang for the Buck", dated January 2012, provides an informative overview of the pricing of human pharmaceutical drugs in the State.

scheme or the Community Drugs Schemes (i.e., Drugs Payment Scheme ("DPS"), Long Term Illness Scheme or High-Tech Drugs Scheme).¹⁴ For patients covered under these schemes, every step of the price-setting chain is regulated and pharmacies have no discretion over the final price charged to the end consumer.

2.17 For private patients (i.e., cash purchasers or sub-threshold DPS patients¹⁵), prices are regulated to the door of the pharmacy, but there is no regulation of the retail mark-up or dispensing fee applied to private prescriptions by pharmacies.

2.18 Table 2 below shows the current price structures in place for human pharmaceutical drugs supplied by community pharmacists under the GMS and Community Drugs Schemes. The ex-factory prices for different categories of pharmaceuticals (in-patent pharmaceuticals and generics) are set down in agreements between the HSE and the representative bodies of branded and generic pharmaceutical manufacturers. The wholesale and retail margins applied to these ex-factory prices, and the dispensing fees charged by retail pharmacists, are set down by the Minister for Health under the Financial Emergency Measures in Public Interest ("FEMPI") regulations, with the agreement of the Minister for Finance.¹⁶

Table 2: Pharmaceutical Pricing for Community Pharmacists under the Community Drugs Schemes, 2013

Ex- Factory Price	Regulated at the level of the manufacturer by way of agreements between the State and the manufacturer representative bodies	
Wholesale Mark-Up	GMS	8% (12% for fridge items)
	DPS/LTI	
	High-Tech	
Retail Mark-Up	GMS	No retail mark-up
	DPS/LTI	20%
	High-Tech	No retail mark-up
Dispensing Fee	GMS	Sliding scale reducing from €5 to €4.50 to €3.30 per item (depending on the number of items dispensed per month)
	DPS/LTI	
	High-Tech	N/A
Patient Care Fee	GMS	N/A
	DPS/LTI	
	High-Tech	€62.30 per patient per month (in months where medication is dispensed) €31.02 per patient per month (for maximum of three months, where medication is <i>not</i> dispensed in a particular month)

¹⁴ There is no official data concerning the proportion of total human pharmaceutical drugs sales accounted for by private patients (i.e., cash purchasers or sub-threshold DPS patients). Past estimates have ranged from 5-15% of total human pharmaceutical drugs sales in the State.

¹⁵ Under the DPS, families must pay the first €144 per month for prescription drugs. Amounts in excess of €144 are paid for by the HSE.

¹⁶ S.I. No. 300 of 2011, *Health Professionals (Reduction of Payments to Community Pharmacy Contractors) Regulations 2011*. These regulations are currently under review as part of the FEMPI review process.

VAT	Oral	No VAT
	Non-Oral	23%
Source: The Competition Authority		

Agreements between the State and Pharmaceutical Manufacturers

- 2.19 The ex-factory price of patented and generic human pharmaceutical drugs is set out in a series of agreements between the HSE and two industry representative bodies: the IPHA, representing brand name pharmaceutical manufacturers, and APMI, representing generic pharmaceutical manufacturers. The agreements serve as the basis for all human pharmaceutical drugs prices in hospital and community pharmacies.
- 2.20 The HSE/IPHA and HSE/APMI agreements apply to all human pharmaceutical drugs that can be prescribed, reimbursed and supplied to the GMS Scheme and the Community Drugs Schemes. Both agreements also apply to all medicines supplied to the HSE, public hospitals and to State agencies whose functions normally include the provision of human pharmaceutical drugs. The current agreements are set to run for three years from November 2012.
- 2.21 The ex-factory price set in accordance with these agreements is a maximum price, applicable across hospital and community pharmacies. Hospitals and full-line wholesalers are free to negotiate lower prices directly with pharmaceutical manufacturers.

Ex-Factory Price of Single Source In-Patent Human Pharmaceutical Drugs

- 2.22 The first step in the price-setting process is the determination of the ex-factory price of single-source in-patent human pharmaceutical drugs. The price of these patented drugs forms the basis of all human pharmaceutical drugs prices. Other categories of human pharmaceutical drugs (generics or parallel imports) are set at a discount to this price. The mark-ups applied at the wholesale and retail levels also refer back to this initial ex-factory price.
- 2.23 Two mechanisms are used to set the ex-factory price:
- external reference pricing whereby the price of human pharmaceutical drugs is set by reference to the price charged for the same product in a basket of the following nine EU countries: Belgium, Denmark, France, Germany, Netherlands, Spain, UK, Finland and Austria. The price is set according to the (currency-adjusted) average price in these nine countries; and
 - a pharmacoeconomic assessment of human pharmaceutical drugs which may be high cost or have a significant budgetary impact on the Irish healthcare system. This assessment is carried out in accordance with agreed Healthcare Technology Assessment guidelines, set out by the Health Information and Quality Authority.

Ex-Factory Price of Parallel Imports

- 2.24 Although parallel import prices are not directly determined in the HSE/IPHA or HSE/APMI agreements, the HSE sets an ex-factory price

for parallel imports which is at a small discount to the single source in-patent ex-factory price. Parallel importers will typically offer further discounts off this price to pharmacists as a way of gaining market share.

Ex-Factory Price of Generic Human Pharmaceutical Drugs

2.25 As is the case with the pricing of parallel imports, the price of patented human pharmaceutical drugs influences the ex-factory price of generic products. The HSE/IPHA agreement stipulates that once a drug comes off-patent, the ex-factory price of that drug is subject to significant reductions (falling to 50% of its original price within twelve months). Under the terms of the HSE/APMI agreement, generic drugs are priced at a discount to the (falling) price of branded drugs whose patent has expired.

Conclusion

2.26 In conclusion, full-line wholesalers have limited influence over the retail price of human pharmaceutical drugs in the State. In order to entice a pharmacy to purchase human pharmaceutical drugs, full-line wholesalers offer discounts which are primarily dependent on the total value of purchases made by the pharmacy, the length of credit given to the pharmacy (e.g., 0, 30, 60 days), and the bargaining strength of the pharmacy in negotiations with the full-line wholesaler. As noted above, full-line wholesalers also seek to attract the custom of pharmacies by offering a high quality delivery service.

3. SECTION THREE: RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

Introduction

3.1 In this section, the relevant markets that are likely to be affected by the proposed acquisition are defined in terms of the product and geographic dimensions. The views of the undertakings involved are summarised and the Authority's views and conclusions set out.

Relevant Product Market

Views of the Undertakings Involved

3.2 The parties state in the notification that there are four product markets affected by the proposed transaction:

- a) The supply of pharmacy-only human pharmaceutical drugs;
- b) The supply of front-of-counter and non-pharmacy only products;
- c) The supply of veterinary drugs; and
- d) The supply of medical supplies.

The Supply of Pharmacy-only Human Pharmaceutical Drugs

3.3 The O'Toole Report #1 states that:

"It seems reasonable to define the basic product as consisting of pharmacy-only human pharmaceutical drugs. In addition, it seems reasonable to focus primary attention on the broadly defined "wholesaling level" of this human pharmaceutical sector as both Uniphar and Cahill May Roberts are involved in the (full-line) wholesaling of human pharmaceutical products and Allphar Services ("Allphar") (part of the Uniphar group) and Movianto Ireland (part of the Cahill May Roberts group) are involved at the pre-wholesaling/LSP level."

"At a general level this approach to product market definition is consistent with Authority (2004), which focused on Uniphar's horizontal acquisition of Boileau & Boyd (a Dublin-based full-line wholesaler), and Authority (2002b), which focused on GEHE/Cahill May Roberts' vertical acquisition of Unicare. Notwithstanding the fact that in both of these decisions the Authority focused particular attention on the more narrowly defined full-line wholesaling level of the sector, recent developments in the relevant supply chain suggest strongly that the

Authority should consider a more broadly defined wholesaling sector. Indeed, the Authority (2009) itself referred to DTP (e.g. in Section 6.24), short-line wholesalers (e.g. in Section 6.25) and parallel importers (e.g. in Section 6.27)."

"Supporting the argument that the Authority should be open to broadening its previous approach to product market definition is the Office of Fair Trading's (2007, Section 2.24) recognition of the growing importance of market participants other than the full-line wholesalers, "... This [table reflecting market shares of full-line wholesalers] is based on the OFT's survey of full-line wholesalers and therefore does not indicate their market shares within the wider wholesale market as no account has been taken of short-line wholesalers or parallel importers."."

"The product dimension to the acquisition is the "wholesaling" of pharmacy-only human pharmaceutical products, i.e. getting pharmaceutical product from manufacturer to retailer. This encompasses the present mechanisms of: (i) manufacturer to pre-wholesaler/logistic service provider to wholesalers to pharmacies; (ii) manufacturer to pre-wholesaler/logistic service provider to pharmacies; and, (iii) manufacturer to wholesaler to pharmacies."

The Supply of Front-Of-Counter and Non-Pharmacy Only Products

- 3.4 The parties state in the notification that their "activities overlap in the supply of front-of-counter and non-pharmacy only products to pharmacies in the State. The parties also overlap in the provision of pre-wholesale/LSP services to manufacturers. The parties submit that the relevant product market may be the LSP/pre-wholesale and wholesale supply of consumer products to all retail outlets in the State that stock such products. On a narrower view, the product market could be said to consist of the supply of health and beauty products only. Supplies of such products to wholesalers could possibly be considered to form a separate product market or segment. Given the minimal activities of the parties in this area, the parties submit that it is not necessary for the Competition Authority to reach a definite view on product market definition."

The Supply of Veterinary Drugs

- 3.5 The parties state in the notification that "the parties overlap to some extent in relation to the supply of veterinary drugs in the State. The parties are both active in the LSP/pre-wholesale supply of veterinary drugs to wholesalers. The parties also have some limited activities in the supply of veterinary drugs to pharmacies/veterinary surgeons but the parties submit (particular given that CMR's activities in this sector

are minimal) that there is little overlap in the activities of the parties in this regard.”

- 3.6 The parties state that “the relevant product market in which to assess the veterinary drugs aspects of the proposed transaction may be the supply of veterinary drugs in the State (i.e., the distribution of veterinary drugs from manufacturers to downstream market players such as wholesalers, veterinary surgeons and pharmacies). On a narrower view, the relevant product market could be split between: (i) LSP/pre-wholesale supplies to wholesalers; and (ii) wholesale/LSP/pre-wholesale supplies to veterinary surgeons, pharmacies and other merchants.”
- 3.7 The parties state that “LSPs/pre-wholesalers offer similar services to manufacturers – the warehousing and transportation of the manufacturers’ veterinary products to wholesalers (and, in some cases, directly to pharmacies/veterinary surgeons). They may also offer other value-added services. Wholesalers supply a wider range of veterinary drugs to veterinary surgeons, pharmacies and other outlets. They may be specialist veterinary wholesalers or general wholesalers (who supply a more limited range of veterinary drugs). In any event, given the minimal activities of the parties in this area, the parties submit that it is not necessary for the Competition Authority to reach a definite view on product market definition.”

The Supply of Medical Supplies

- 3.8 The parties state in the notification that “the parties overlap in the pre-wholesale/LSP supply of medical supplies to wholesalers, hospitals, medical centres/clinics and community pharmacies. The parties’ wholesale divisions have little, if any, involvement in the supply of medical supplies. The parties submit that the relevant product market in which to assess the medical supplies aspects of the proposed transaction may be the supply of medical supplies in the State (i.e., the distribution of medical supplies from manufacturers to downstream market players such as wholesalers, hospitals and community pharmacies).”
- 3.9 The parties state that “on a narrower view, the relevant product market could be split between: (i) LSP/pre-wholesale supplies of medical supplies to wholesalers; and (ii) wholesale/LSP/pre-wholesale supplies of medical supplies to hospitals, medical centres/clinics and community pharmacies. LSPs/pre-wholesalers offer similar services to manufacturers – the warehousing and transportation of the manufacturers’ medical supplies to wholesalers, hospitals, clinics etc. They may also offer other value-added services.”
- 3.10 The parties state that “in terms of the supply to hospitals, LSPs are often the preferred suppliers, as this offers hospitals the best discounts from manufacturers. However, wholesalers are also involved in supplies to hospitals, particular when the relevant LSP of the manufacturer cannot provide supplies quickly enough. In any event, given the minimal activities of the parties in this area, the parties submit that it is not necessary for the Competition Authority to reach a definite view on product market definition.”

Views of the Competition Authority

The Pre-wholesale Supply of Pharmacy-only Human Pharmaceutical Drugs

- 3.11 There is a horizontal overlap between the parties with respect to the pre-wholesale supply of human pharmaceutical drugs. As described in Section 2 above, full-line wholesalers also act as agents on behalf of pharmaceutical manufacturers and distribute these firms' products to competing full-line wholesalers, community pharmacies and hospital pharmacies. This business is referred to as "pre-wholesaling".
- 3.12 The Authority considers the pre-wholesale supply of human pharmaceutical drugs to be a separate product market, distinct from the wholesale supply of human pharmaceutical drugs. It is significant in this regard that the website of each of the three full-line wholesalers active in the State has a separate section describing their pre-wholesaling business activities in the State. Furthermore, 11 out of the 16 pharmaceutical manufacturers who responded to the Authority's questionnaire indicated that they only sell human pharmaceutical drugs to pre-wholesalers.¹⁷
- 3.13 For the purpose of its competitive assessment, the Authority will examine the competitive impact of the proposed transaction in the market for the pre-wholesale supply of pharmacy-only human pharmaceutical drugs. 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., pre-wholesaling) or broader to encompass other distribution methods such as DTP.

The Full-Line Wholesale Supply of Pharmacy-only Human Pharmaceutical Drugs

- 3.14 There is a horizontal overlap between the parties with respect to the wholesale supply of human pharmaceutical drugs.
- 3.15 Previously in M/04/020 - Uniphar/Whelehan, the Authority concluded that the relevant product market was the distribution service provided by full-line pharmaceutical wholesalers, for the supply of human pharmaceutical medicines. In paragraph 2.13 of its 2004 determination, the Authority stated the following:

"Given the demands of pharmacies with regard to product range and delivery time, the particular services provided by full-line wholesalers are distinct from those of short-line wholesalers. Pharmacies can avoid carrying large inventories, dealing with numerous vendors and negotiating numerous transactions. Wholesalers compete in terms of frequency of delivery, discount, and other terms. Pharmacies do not view the less frequent services of short-line wholesalers as substitutable for those of full-line wholesalers. Thus short-line wholesaling does not form part of the relevant market for the analysis of the proposed acquisition, though

¹⁷ One out of the 16 pharmaceutical manufacturers indicated that it carries out its own distribution of human pharmaceutical drugs to full-line wholesalers while one out of the 16 pharmaceutical manufacturers indicated that it uses an LSP to distribute its products to full-line wholesalers.

short-line wholesalers do exercise some limited competitive constraint on their full-line counterparts. For the same reasons, distribution of products by means other than wholesalers, such as pharmacies purchasing direct from manufacturers, or self-supply, do not appear to be substitutable for the service provided by full-line wholesalers, from a demand point of view.”

Distinction between Full-Line Wholesaling and Short-Line Wholesaling

- 3.16 The Authority’s survey of short-line wholesalers/parallel importers confirmed that they stock a much smaller range of human pharmaceutical drugs (around 100-500 SKUs) than full-line wholesalers and only deliver to pharmacies once per day and, in some cases, delivery is made the next working day. When asked in the Authority’s questionnaire to list “your main competitors in the supply of human pharmaceutical drugs to (a) hospital pharmacies and (b) community pharmacies in the Republic of Ireland”, over half of the short-line wholesalers/parallel importers who responded did not list any full-line wholesaler as a competitor.
- 3.17 In order to inform its analysis of the relevant product market definition, the Authority sought the views of pharmacies in the State. 55% of pharmacies who completed the questionnaire administered by Ipsos MRBI on behalf of the Authority stated that they do not consider short-line wholesalers/parallel importers to be a credible alternative to full-line wholesalers. 37% stated that they do consider short-line wholesalers/parallel importers to be a credible alternative to full-line wholesalers. 8% stated “Don’t Know” in response to the question.
- 3.18 When asked to list the advantages of purchasing human pharmaceutical drugs from short-line wholesalers/parallel importers, the most common factor cited by pharmacies was price. When asked to list the disadvantages of purchasing human pharmaceutical drugs from short-line wholesalers/parallel importers, pharmacies cited two main disadvantages: the limited range of products sold and the inferior delivery service.
- 3.19 The Authority therefore sees no reason to depart from the view expressed in its 2004 determination that the distribution services provided by short-line wholesalers, though exercising some limited competitive constraint, are not substitutable for the services provided by full-line wholesalers.

Distinction between Full-Line Wholesaling and Direct-to-Pharmacy Sales by Pharmaceutical Manufacturers

- 3.20 Eight out of the 16 pharmaceutical manufacturers who responded to the Authority’s questionnaire indicated that they do not sell human pharmaceutical drugs direct to pharmacies. Furthermore, market inquiries by the Authority confirmed that DTP sales by pharmaceutical manufacturers tend to be confined to be specific types of human pharmaceutical drugs such as products sold under the High Tech Drugs Scheme.
- 3.21 63% of pharmacies who completed the questionnaire administered by Ipsos MRBI stated that they do not consider purchasing directly from a pharmaceutical manufacturer to be a credible alternative to purchasing

from full-line wholesalers.¹⁸ 31% of pharmacies stated that they do consider purchasing directly from a pharmaceutical manufacturer to be a credible alternative to purchasing from full-line wholesalers. 6% stated "Don't Know" in response to the question.

- 3.22 The Authority therefore sees no reason to depart from the view expressed in its 2004 determination that the distribution of human pharmaceutical drugs by means of pharmacies purchasing direct from manufacturers, though exercising some limited competitive constraint, is not substitutable for the services provided by full-line wholesalers.
- 3.23 For the purpose of its competitive assessment, the Authority will therefore examine the competitive impact of the proposed transaction in the market for the full-line wholesale supply of pharmacy-only human pharmaceutical drugs. This is the narrowest possible product market affected by the proposed transaction.

The Supply of Front-Of-Counter and Non-Pharmacy Only Products

- 3.24 There is a horizontal overlap between the parties with respect to the pre-wholesale supply of front-of-counter and non-pharmacy only products and the wholesale supply of front-of-counter and non-pharmacy only products. For the purpose of its competitive assessment, the Authority will examine the competitive impact of the proposed transaction in the market for the supply of front-of-counter and non-pharmacy only products. This encompasses both the pre-wholesale supply and the wholesale supply of front-of-counter and non-pharmacy only products.
- 3.25 Given the minimal activities of the parties in the supply of front-of-counter and non-pharmacy only products, it is not necessary for the Authority to reach a definite view on the precise relevant product market. The Authority's conclusions concerning the competitive impact of the proposed transaction, outlined below, would be unaffected whether the relevant product market is narrow (e.g., the pre-wholesale supply of front-of-counter and non-pharmacy only products) or broader to encompass both the pre-wholesale supply and the wholesale supply of front-of-counter and non-pharmacy only products.

The Supply of Veterinary Drugs

- 3.26 There is a horizontal overlap between the parties with respect to the pre-wholesale supply of veterinary drugs and the wholesale supply of veterinary drugs. For the purpose of its competitive assessment, the Authority will examine the competitive impact of the proposed transaction in the market for the supply of veterinary drugs. This encompasses both the pre-wholesale supply and the wholesale supply of veterinary drugs.
- 3.27 Given the minimal activities of the parties in this area, it is not necessary for the Authority to reach a definite view on the precise relevant product market. The Authority's conclusions concerning the competitive impact of the proposed transaction, outlined below, would be unaffected whether the relevant product market is narrow (e.g., the

¹⁸ Furthermore, all three pharmacy buying groups contacted by the Authority (who collectively represent approximately 150 pharmacies in the State) also expressed the view that DTP is not a credible alternative to purchasing from full-line wholesalers.

pre-wholesale supply of veterinary drugs) or broader to encompass both the pre-wholesale supply and the wholesale supply of veterinary drugs.

The Supply of Medical Supplies

3.28 There is a horizontal overlap between the parties with respect to the pre-wholesale supply of medical supplies and the wholesale supply of medical supplies. For the purpose of its competitive assessment, the Authority will examine the competitive impact of the proposed transaction in the market for the supply of medical supplies. This encompasses both the pre-wholesale supply and the wholesale supply of medical supplies.

3.29 Given the minimal activities of the parties in this area, it is not necessary for the Authority to reach a definite view on the precise relevant product market. The Authority's conclusions concerning the competitive impact of the proposed transaction, outlined below, would be unaffected whether the relevant product market is narrow (e.g., the pre-wholesale supply of medical supplies) or broader to encompass both the pre-wholesale supply and the wholesale supply of medical supplies.

Conclusion on the Relevant Product Markets

3.30 For the purpose of examining the competitive effects of the proposed transaction, the Authority will examine the following product markets:

- The pre-wholesale supply of pharmacy-only human pharmaceutical drugs;
- The full-line wholesale supply of pharmacy-only human pharmaceutical drugs;
- The supply of front-of-counter and non-pharmacy only products;
- The supply of veterinary drugs; and
- The supply of medical supplies.

Relevant Geographic Market

Views of the Undertakings Involved

The Supply of Pharmacy-only Human Pharmaceutical Drugs

3.31 The O'Toole Report #1 states that

"It seems reasonable to this author to consider the proposed acquisition from the national geographic market perspective. Although each of the three full-line wholesalers has a small number of wholesale branches outside Dublin, the author understands that Uniphar's [...] and to United Drug's regional depots in Ballina and Limerick. In addition, the author

understands that at least one of the three full-line wholesalers has consolidated its inbound deliveries of product to its Dublin warehouses and has consolidated its key evening/morning picks to Dublin, with its regional depots only being used for the afternoon deliveries to locally based pharmacies. This centralisation process - which has been facilitated by Ireland's vastly improved road network - has the advantage of reducing stock-holding needs and hence improving cash-flow."

"In apparent contrast to the above, the Authority (2004, Section 2.23 in particular) argued that the geographic market was regional in nature (although the Authority also noted that whether or not the market was regional or national would not have affected its ultimate decision). However, it seems clear to this author that this position was due primarily to the specific regional nature of that proposed transaction in that Boileau & Boyd represented a *regionally-based* (i.e. Dublin/Leinster based) full-line wholesaler. In summary, it seems clear that logistical trends at the full-line wholesaling level would now point towards a national market definition."

"Notwithstanding this national focus, however, it must also be recognised that while United Drug appears to be relatively strong across Ireland, Uniphar and Cahill May Roberts' regional strengths appear to complement each other to at least some extent. For example, [...]."

"A national geographic market approach is appropriate but any possible regional approach would reduce any possible competition policy concerns as a result of the complementary nature of the two parties' distributional networks."

The Supply of Front-Of-Counter and Non-Pharmacy Only Products

3.32 The parties state that "the relevant geographic market is the State, given the scope and set-up of the distribution networks of pre-wholesalers, LSPs and wholesalers of front-of-counter and non-pharmacy only products".

The Supply of Veterinary Drugs

3.33 The parties state that "the relevant geographic market is the State, given the scope and set-up of the distribution networks of veterinary pre-wholesalers, LSPs and wholesalers."

The Supply of Medical Supplies

- 3.34 The parties state "the relevant geographic market is the State, given the scope and set-up of the distribution networks of medical supplies pre-wholesalers, LSPs and wholesalers."

Views of the Competition Authority

- 3.35 Previously in M/04/020 - Uniphar/Whelehan, the Authority stated in paragraph 2.23 that "the relevant geographic market is regional in nature, given the constraints on frequency of delivery on the demand side." It should be noted, however, that the full-line pharmaceutical wholesaling activities of the company being acquired in that merger notification, Boileau & Boyd Limited, were confined to the Greater Dublin Area. The Authority noted in paragraph 2.19 of its 2004 determination that "Boileau & Boyd's activities elsewhere may not be relevant."
- 3.36 Pharmacies in Northern Ireland are not supplied by full-line wholesalers located in the State, as they operate under a different regulatory system. Similarly, full-line pharmaceutical wholesalers in Northern Ireland do not supply pharmacies in the State. Thus, the relevant geographic market for full-line pharmaceutical wholesaling affected by the proposed transaction does not include Northern Ireland.
- 3.37 The relevant geographic market for full-line pharmaceutical wholesaling may be national as each of the three full-line wholesalers operate nationally, using strategically located depots. Each of the three full-line pharmaceutical wholesalers has pharmacy customers located in all counties in the State.¹⁹
- 3.38 The Authority also considers it significant that Uniphar's morning deliveries to all of its pharmacy customers in the State are made from its Dublin depot with Uniphar's regional depots in Cork, Sligo and Limerick only being used for evening deliveries to locally-based pharmacies.²⁰ As noted above in the O'Toole Report #1, this centralisation process by Uniphar has been facilitated by Ireland's improved road network.
- 3.39 For the purpose of its competitive assessment in all five product markets listed in paragraph 3.30 above, the Authority will examine the competitive impact of the proposed transaction in the State. The Authority, however, does not need to come to a definitive view on the precise relevant geographic market because its conclusions concerning the competitive impact of the proposed transaction, outlined below, would be unaffected whether the relevant geographic market is narrow (e.g., regional) or broader to encompass the State.

Conclusion on the Relevant Product and Geographic Markets

- 3.40 For the purpose of examining the competitive effects of the proposed transaction, the Authority will examine the following markets:

¹⁹ The Authority understands that Galway Drug Company Limited is also a full-line wholesaler of human pharmaceutical drugs. [...]

²⁰ Uniphar informed the Authority that its morning deliveries are generally completed by 13.00 while all evening deliveries are usually completed by 17.30 each day.

- The pre-wholesale supply of pharmacy-only human pharmaceutical drugs in the State;
- The full-line wholesale supply of pharmacy-only human pharmaceutical drugs in the State;
- The supply of front-of-counter and non-pharmacy only products in the State;
- The supply of veterinary drugs in the State; and
- The supply of medical supplies in the State.

4. SECTION FOUR: MARKET STRUCTURE

Introduction

4.1 Market structure can be characterised by the number and size distribution of firms. The initial impact of any merger or acquisition is felt on market structure as two firms pre-acquisition become one firm post-acquisition. This section considers the pre-proposed acquisition and post-proposed acquisition market shares in the following two markets:

- the full-line wholesale supply of pharmacy-only human pharmaceutical drugs in the State; and
- the pre-wholesale supply of pharmacy-only human pharmaceutical drugs in the State.

Measuring Market Concentration

4.2 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. It refers in particular to the number and size distribution of firms in the relevant market: the fewer the number of firms and/or the more disparate the firms are in terms of their sizes, the more concentrated the market. The significance of concentration in competition analysis is that in highly concentrated markets in which entry is difficult, effective competition is likely to be weak.

4.3 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. According to the Authority's *Merger Guidelines*, a HHI in excess of 1800 combined with a change in pre-merger HHI compared to the post-merger HHI of greater than 100 indicates a situation where "mergers occur in already highly concentrated industries and more usually be those that raise competitive concerns" (paragraph 3.10).²¹ Therefore, if the HHI is above 1800, this indicates that firms in that market may be able to exercise market power.

Market Structure in the Full-Line Wholesale Supply of Pharmacy-only Human Pharmaceutical Drugs in the State

4.4 Table 3 below presents market share data over the period 2006-2012 for the full-line wholesale supply of pharmacy-only human pharmaceutical drugs in the State.

²¹ 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

Table 3: The Full-Line Wholesaling of Pharmacy-only Human Pharmaceutical Drugs, by Value (€) %, 2006-2012, the State²²

	2006	2007	2008	2009	2010	2011	2012
United Drug	[45-50]	[50-55]	[45-50]	[45-50]	[50-55]	[50-55]	[50-55]
Uniphar	[25-30]	[25-30]	[30-35]	[30-35]	[25-30]	[25-30]	[25-30]
CMR	[20-25]	[20-25]	[20-25]	[20-25]	[20-25]	[20-25]	[15-20]
Total (€, millions)	1,393	1,526	1,532	1,530	1,425	1,425	1,448

Source: The Parties and IMS Health

- 4.5 The total size of the market for full-line pharmaceutical wholesaling declined considerably between 2009 and 2010 but has since stabilised with an actual increase recorded between 2011 and 2012.
- 4.6 United Drug is the clear market leader in full-line wholesaling in the State with a market share of [50-55]% in 2012. United Drug has experienced a significant increase in its market share since 2009, primarily at the expense of Uniphar. CMR's market share over the period 2006-2012 has been relatively stable.
- 4.7 Following the proposed transaction, Uniphar's market share should increase to around [45-50]%.²³ The pre-proposed transaction HHI is 4,028 while the HHI post-transaction would be 5,038. The change in the HHI would be 1,010.
- 4.8 These HHI results would put the transaction in Zone C as defined by the Authority's *Merger Guidelines*. The *Merger Guidelines* states that "Zone C mergers occur in already highly concentrated markets and more usually be those that raise competitive concerns."²⁴ HHI calculations are not, however, conclusive in themselves. HHI calculations provide a screening mechanism which in this case indicates that further investigation and analysis is warranted.
- 4.9 For completeness, Table 4 below presents data over the period 2006-2012 for the total wholesale supply of pharmacy-only human pharmaceutical drugs in the State (i.e., including sales made by short-line wholesalers/parallel importers and DTP).

Table 4: The Wholesale Supply of Pharmacy-only Human Pharmaceutical Drugs, by Value (€) %, 2006-2012, the State

	2006	2007	2008	2009	2010	2011	2012
United Drug	[40-45]	[40-45]	[40-45]	[40-45]	[40-45]	[40-45]	[40-45]
Uniphar	[25-30]	[25-30]	[25-30]	[20-25]	[20-25]	[20-25]	[20-25]
CMR	[15-20]	[15-20]	[15-20]	[15-20]	[15-20]	[15-20]	[15-20]
SLW/Pis	4.8	5.1	6.1	9.3	12.8	7.7	7.1

²² As noted in Section 3 above, Galway Drug Company Limited is also a full-line wholesaler of human pharmaceutical drugs in the State. [...] The exclusion of Galway Drug Company Limited from Table 3 makes no difference to the HHI calculations presented in paragraph 4.7.

²³ Given the general absence of contracts between full-line wholesalers and pharmacies, it is difficult to predict with accuracy the likely market shares of the two remaining full-line wholesalers post-transaction.

²⁴ *op cit.* note 21, paragraph 3.10, page 11.

DTP	5.1	7.3	8.1	7.9	8.9	10.7	12.8
Total (€, millions)	1,467	1,646	1,786	1,848	1,820	1,748	1,807

Source: The Parties and IMS Health

- 4.10 DTP sales have grown significantly over the period 2006-2012, accounting for 12.8% of the total wholesale supply of pharmacy-only human pharmaceutical drugs in the State in 2012. Sales by short-line wholesalers/parallel importers peaked at 12.8% in 2010 before declining to 7.1% by 2012. This is unsurprising given the fall in the price of human pharmaceutical drugs resulting from the recent agreements between the HSE and the representative bodies of pharmaceutical manufacturers in the State. This decline in the ex-factory price of human pharmaceutical drugs has reduced the arbitrage opportunities for parallel importers.
- 4.11 United Drug is still the clear leader in pharmaceutical wholesaling in the State with a share of [40-45]% in 2012. United Drug's share of total pharmaceutical wholesaling in the State has been relatively stable over the period 2006-2012.
- 4.12 In contrast to United Drug, both Uniphar and CMR experienced a considerable decline in their respective shares of the total wholesale supply of pharmacy-only human pharmaceutical drugs in the State over the period 2006-2010. Since 2010, however, Uniphar's share has stabilised while CMR experienced an increase in its share from [15-20]% in 2010 to [15-20]% in 2011 before falling back to [15-20]% in 2012.
- 4.13 Following the proposed transaction, Uniphar's share should increase to around [35-40]%. Focusing solely on the shares of the three full-line wholesalers, the pre-proposed transaction HHI is 2,567 while the HHI post-transaction would be 3,233. The change in the HHI would be 666. Thus, these HHI results would also put the transaction in Zone C as defined by the Authority's *Merger Guidelines*.

Market Structure in the Pre-wholesale Supply of Pharmacy-only Human Pharmaceutical Drugs in the State

- 4.14 Table 5 below presents market share data over the period 2010-2012 for the pre-wholesale supply of pharmacy-only human pharmaceutical drugs in the State.²⁵

Table 5: The Pre-Wholesale Supply of Pharmacy-only Human Pharmaceutical Drugs, by Value (€) %, 2010-2012, the State

	2010	2011	2012
United Drug	[55-60]	[55-60]	[55-60]
Allphar (Uniphar)	[15-20]	[15-20]	[15-20]
Movianto (CMR)	[20-25]	[25-30]	[20-25]
Total (€, millions)	1,119	1,130	1,191

Source: The Parties

²⁵ This data includes pre-wholesale sales of pharmacy-only human pharmaceutical drugs to hospitals in the State.

- 4.15 As with full-line wholesaling, United Drug is the market leader in the pre-wholesale supply of pharmacy-only human pharmaceutical drugs in the State with a market share of [55-60]% in 2012. Following the proposed transaction, Uniphar's market share in pre-wholesaling will increase to around [40-45]%. The pre-proposed transaction HHI is 4,186 while the HHI post-transaction would be 5,098. The change in the HHI would be 912. Thus, these HHI results would put the transaction in Zone C as defined by the Authority's *Merger Guidelines*.
- 4.16 As noted above, however, HHI calculations are not conclusive in themselves. They provide a screening mechanism which in this case indicates that further investigation and analysis is warranted.

5. SECTION FIVE: COMPETITIVE ASSESSMENT

Introduction

- 5.1 The Authority's merger review function is to determine whether or not a notified merger or acquisition will, or will not, substantially lessen competition in markets for goods or services in the State.
- 5.2 In this section, the Authority examines the competitive effects of the proposed transaction in the following two markets:
- The full-line wholesale supply of pharmacy-only human pharmaceutical drugs in the State; and
 - The pre-wholesale supply of pharmacy-only human pharmaceutical drugs in the State.
- 5.3 The section begins, however, with an examination of the relevant counterfactual, i.e., the state of competition in the relevant market in the absence of the proposed transaction.

The Counterfactual

- 5.4 Identifying the relevant counterfactual is an important step in assessing the competitive effects of the proposed transaction. In particular, an important issue to consider in this instance is whether or not CMR constitutes a failing firm.

Views of the Undertakings Involved

- 5.5 The O'Toole Report #1 makes the following arguments in relation to the counterfactual:

"The manufacturing and retail prices of medicines to the State are governed by a series of agreements between the State and the Irish Pharmaceutical Healthcare Association ("IPHA") and significant recent reductions have been achieved with respect to the cost of medicines to the State. In particular, the likely introduction and/or refinement of "reference pricing", increased usage of generic substitution and the above-mentioned very significant reduction in the built-in wholesale margin have reduced (and will likely continue to reduce) very significantly the income of, amongst others, wholesalers and more generally total turnover in the Irish pharmaceutical sector."

"There are two likely, indeed arguably inevitable, responses to this reduced turnover combined with increased level of product polarisation, namely, increased consolidation within full-line wholesaling (e.g. three full-line wholesalers becoming two full-line wholesalers) and/or the introduction of

something like a fixed wholesaling fee per SKU (or, somewhat equivalently, the introduction of a percentage mark-up that varies inversely with the price of the product)."

"In respect of the implications for the viability of the full-line wholesale model of the possible reduction in pharmaceutical expenditure, the ESRI (2012, Section 5.4.1, p.93) contains the following comment: *"Although competition would not be as strong with two full-line wholesalers as three, pharmacists would still be able to play one off against the other."*

"The author understands that it is not that unusual for there to be "only" two full-line wholesalers in a particular region (e.g. Northern Ireland and Denmark); of course, the presence of only two full-line wholesalers does not imply the presence of only two significant market participants. In the alternative to consolidation and/or a significant change in pricing policy, full-line wholesalers would, notwithstanding some relatively recent significant investments in Dublin-based depots, have very little if any incentive to re-invest in their full-line warehousing and associated IT facilities. In particular, and in the author's view, the full-line wholesaling business model would have to evolve significantly (e.g. once a day deliveries, reduced discounts)."

"In summary, it is clear that the wholesale sector has been evolving and that the relevant counterfactual to the acquisition is not a meaningful narrowly defined full-line wholesaling "market" with three market participants with commercial life continuing on as, say, 5 to 10 years ago. [...]"

Views of the Authority

- 5.6 The parties did not submit to the Authority that CMR should be considered a failing firm for the purpose of reviewing the proposed transaction. The parties did not make a submission to the Authority in relation to each of the four criteria set out in the Authority's *Merger Guidelines* for showing that a firm is failing.²⁶
- 5.7 Consequently, notwithstanding Celesio's stated intention to sell CMR, the Authority considers that the appropriate counterfactual upon which to assess the competitive effects of the proposed transaction is the ongoing presence of CMR in its present form in each of the five markets listed in Section 4 above.

²⁶ *op cit.* note 21, paragraph 5.17, pages 26 and 27.

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- 5.8 Assessing the competitive effects of the proposed transaction requires the identification any relevant theories of harm (i.e., how the proposed transaction could result in a substantial lessening of competition) and an analysis of those theories of harm through an evaluation of the available evidence.
- 5.9 For the purpose of assessing the competitive impact of the proposed transaction, the Authority identified two relevant theories of harm to be evaluated: coordinated effects and unilateral effects.

Coordinated Effects

- 5.10 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 coordinated interaction to raise prices and/or decrease output. Such interaction refers to actions that are profitable only as a result of each firm accommodating the reactions of others. Thus, the key question is whether the proposed transaction materially increases the likelihood that firms in the market will successfully coordinate their behaviour or strengthen existing coordination.

Views of the Undertakings Involved

- 5.11 The O'Toole Report #1 makes the following arguments in relation to coordinated effects:

"The ESRI Report (2012) refers in a number of places to the existence of vigorous competition between the three full-line wholesalers. For example: *"The evidence suggests that there is vigorous competition between the three full-line wholesalers."* (ESRI, 2012, Section 5.6, page 100). As such, any major competitive environment concerns with respect to the acquisition would likely centre on potential co-ordinated price effects concerns."

"For serious co-ordinated price effects concerns to arise within the wholesaling of pharmaceutical products, the product would need to be homogeneous, the relevant firms (and their vertical structures) would need to be very similar and market shares would need to be symmetric and stable over time. Indeed, the wholesaling level itself would need to be stable. In addition, however, there would need to be output price transparency and little/no excess capacity (post the acquisition).

The above is not an exhaustive list but the Authority (2004, Sections 3.5 to 3.11 in

particular²⁷) made it clear that the non-transparency of discounts offered by the full-line wholesalers to pharmacies greatly reassured the Authority in regard to possible co-ordinated price effects concerns: "3.6 *The most persuasive piece of evidence indicating an absence of coordinated behaviour in the market is the wide dispersion in the discount rate charged by industry participants to customers. One would not expect to see a considerable degree of variation in the discount given to different pharmacies of a similar size in a market where firms are engaging in collusive behaviour.*"

5.12 In the O'Toole Report #2, the following arguments in relation to the likelihood of coordinated effects post-transaction are made:

Lack of transparency The conditions for reaching a common understanding by the relevant market players are not present. There is an overall lack of transparency. While the retail prices are, of course transparent, the price that the retailer pays to a wholesaling entity, even if attention is restricted to the three full-line wholesalers, is not at all transparent as a complex multi-dimensional package is negotiated bi-laterally (between the individual pharmacist and the individual (primary) full-line wholesaler). Specifically, apart from the significant limits on pricing imposed by regulation by the State, there is no transparency with respect to output prices. In particular, there is no single-dimension or multi-dimensional "rate card".

Product homogeneity Similarly, although at a big picture (or "cluster") level the full-line wholesalers' product/service can be characterised as being "homogeneous" (e.g. twice daily deliveries as the primary full-line wholesaler), the crucial bi-lateral price negotiations clearly revolve around the net as opposed to gross discount, both of which are in themselves controlled/regulated to a significant extent by the State. For example, two equivalent quoted gross discount rates differ significantly if backed up, for example, with different credit and/or loan terms. In a sense, the full-line wholesaler acts as a bank as well as a full-line wholesaler and as such, its product is not as homogeneous as it might first appear.

²⁷ Merger Notification M/04/020 - Uniphar/Whelehan.

Asymmetries In addition, while the two remaining full-line wholesalers post-completion of the proposed transaction would have fairly similar input costs (if not identical in at least one important respect, i.e. pharmaceutical manufacturers' prices), Uniphar would clearly still have a very significant level of excess capacity. In addition, the two remaining full-line wholesalers would differ at least to some significant extent from each other in terms of their exact mix of various wholesaling activities (e.g. pre-wholesaling/LSP, DTP/LSP and full-line wholesaling itself).

Weak Competitive Constraints While it is accepted that there are significant (natural) barriers to entry into the full-line wholesaling segment of the wholesaling market/sector, it is clear that any attempt by the remaining full-line wholesalers to engage in tacit collusion would be countered by at least: (i) manufacturers who have the ability to bypass the full-line wholesaling channel for high value and/or high volume pharmaceuticals; and/or, (ii) short-line wholesalers who have the ability to widen the scope of their wholesaling activities further and the service levels associated with same."

- 5.13 In a submission to the Authority entitled "Uniphar and Professor Francis O'Toole comments on the risk of co-ordinated behaviour post-transaction with respect to service quality" dated 27 March 2013, Uniphar make the following arguments in relation to the likelihood of coordinated effects post-transaction:

"Any reduction in service quality would force pharmacists to look for additional discounts and/or purchase more from short-line wholesalers/DTP as pharmacists seek to cover the cost of carrying additional stock."

"The manufacturer ultimately determines the route to market for its products. Today manufacturers are operating a DTP model for high-priced/volume medicines and leaving the balance with full-line wholesalers. Manufacturers could change this practice if full-line wholesalers do not deliver their relevant products economically."

"Full-line wholesalers have a fixed cost base that requires more volume not less. It would not make economic sense to reduce service/volumes and therefore increase discounts or lose further market share to short-line wholesalers/DTP. A service change such as moving to once-daily delivery

nationally would reduce the cost base for Uniphar/CMR by €[...], however, these savings would quickly vanish through increased customer discounts and/or lost market share to other market participants. For Uniphar/CMR, a small increase in discounts or a [0-5]% market share loss would more than wipe out this saving and at the same time seriously undermine its unique selling point for pharmacies.”

“Post-transaction, the two remaining full-line wholesalers would still have significant sunk investments in facilities and technology and the only viable commercial option would be to drive more volumes in order to deliver some return on this investment.”

- 5.14 In the O’Toole Report #3, the following arguments in relation to the likelihood of coordinated effects post-transaction are made:

“In general, it is important to think in terms of the quality-adjusted price of a product. As such, both the agreed price/discount and associated service quality dimensions must be considered. Indeed, one can think of the quality-adjusted price of a product as being made up of a bundle of criteria or characteristics; in the present context, the quality adjusted price (or perhaps what could be called the “net discount”) would depend on a number of different factors apart from the actual agreed price/discount (or what might be called the “gross price/discount”), e.g. payment terms, number of deliveries, availability or non-availability of relevant pharmaceuticals and/or terms of loan/financing.”

“Consider just one dimension of service quality, say, number of daily or weekly deliveries. Although it would be feasible for each of the two remaining full-line wholesalers to observe the number of daily or weekly deliveries made by its competitor to any pharmacy or more generally any area/region, there would be no advantage to the full-line wholesalers in tacitly agreeing to reduce the number of such deliveries. It is true that a reduction in the number of such deliveries would if all else remained equal increase profits. However, it is clear that the proposed reduction in the number of such deliveries would simply encourage each relevant pharmacy to look for an associated (gross) price reduction from each of the remaining full-line wholesalers.”

"In addition, of course, the full-line wholesalers would be becoming more like short-line wholesalers or LSPs as a result of a decrease in deliveries and losing some business at the margin as a result, i.e. there would likely be a commercial disincentive against the full-line wholesalers behaving less like full-line wholesalers and more like the other participants in the broadly defined wholesaling market. In summary, why would the two full-line wholesalers tacitly collude on the service dimension to competition when each would be tempted (indeed, cajoled) into returning any gains to the customer via the price dimension?"

Views of the Authority

- 5.15 The Authority considers that the proposed transaction will not make it sufficiently more likely that Uniphar and United Drug will engage in tacit coordinated behaviour as to substantially lessen competition. This view is based on the following reasons and evidence.

Views of Pharmacies

Third Party Submissions

- 5.16 During the Phase 1 investigation, the Authority received only one third party submission from a pharmacy: [...]. [...] views are described in Section 1 above.
- 5.17 During the Phase 2 investigation, the Authority received only one third party submission from a pharmacy: [...]. As described in Section 1 above, [...] repeated the views expressed in its submission to the Authority during the Phase 1 investigation.

Ipsos MRBI Survey of Pharmacies

- 5.18 As described in Section 1 above, of the 198 pharmacies in total who were contacted by Ipsos MRBI on behalf of the Authority, only 77 responded to the survey questionnaire.
- 5.19 39% of the 77 pharmacies who completed the questionnaire expressed the view that the proposed transaction would have an effect on competition in the wholesale supply of human pharmaceutical drugs in the State. When asked to explain their response, the most common reason provided was that there will be less competition post-transaction since there will only be two full-line wholesalers remaining in the market. 38% expressed the view that the proposed transaction would have no effect on competition in the wholesale supply of human pharmaceutical drugs in the State. 19% replied "Don't Know". 4% did not respond to the question.
- 5.20 Only 10% of pharmacies who completed the questionnaire expressed the view that the proposed transaction would have an effect on the level of discounts offered by its primary full-line wholesaler of human pharmaceutical drugs. 45% stated that the proposed transaction

would have no effect on the level of discounts. 38% replied "Don't Know". 6% did not respond to the question.

- 5.21 Similarly, only 12% of pharmacies who completed the questionnaire stated that the proposed transaction would have an effect on the level of discounts offered by its secondary full-line wholesaler of human pharmaceutical drugs. 44% stated that the proposed transaction would have no effect on the level of discounts. 39% replied "Don't Know". 5% did not respond to the question.
- 5.22 With respect to service quality, only 18% of pharmacies who completed the questionnaire stated that the proposed transaction would have an effect on the quality of service offered by its primary full-line wholesaler of human pharmaceutical drugs. 47% stated that the proposed transaction would have no effect on service quality. 31% replied "Don't Know". 4% did not respond to the question.
- 5.23 Similarly, only 10% of pharmacies who completed the questionnaire stated that the proposed transaction would have an effect on the quality of service offered by its secondary full-line wholesaler of human pharmaceutical drugs. 52% stated that the proposed transaction would have no effect on service quality. 32% replied "Don't Know". 5% did not respond to the question.
- 5.24 In conclusion, the majority of pharmacies who completed the Authority's questionnaire expressed the view that the proposed transaction will have no effect on either the level of discounts or the quality of service given by full-line wholesalers of human pharmaceutical drugs.

Views of Irish Pharmacy Union

- 5.25 The IPU, the representative body for community pharmacies in the State, informed the Authority that most of its members would be concerned if there was not an orderly transfer of the CMR business in the event that it was sold by Celesio. The IPU expressed the view that there is currently a lot of competition between the existing three full-line wholesalers in the State which means competitive discounts are being offered to pharmacies. The IPU expressed the view that CMR has been losing market share in recent years. The IPU also expressed the view that the proposed transaction will mean that there will be two strong full-line pharmaceutical wholesalers active in the State. The IPU expressed no concern about possible coordinated behaviour post-transaction.

Views of Pharmaceutical Manufacturers

- 5.26 The Authority contacted 18 pharmaceutical manufacturers to ascertain their views on competitive impact of the proposed transaction.²⁸ Of the 18 pharmaceutical manufacturers who received a questionnaire from the Authority, 16 completed the Authority's questionnaire.
- 5.27 Ten out of the 16 pharmaceutical manufacturers who responded to the Authority's questionnaire expressed no concern about the impact of the

²⁸ These 18 pharmaceutical manufacturers were selected by the Authority from separate lists provided to the Authority by both Uniphar and CMR of their top 10 human pharmaceutical drugs suppliers in the State

proposed transaction on the wholesale supply of human pharmaceutical drugs in the State.²⁹ Of these ten pharmaceutical manufacturers, three expressed the view that the proposed transaction may enhance competition since the merged entity may be in a better position to compete with United Drug in the wholesale supply of human pharmaceutical drugs in the State.

- 5.28 Six out of the 16 pharmaceutical manufacturers raised a competition concern about the impact of the proposed transaction on the wholesale supply of human pharmaceutical drugs in the State. All six manufacturers expressed the view that the proposed transaction would reduce the choice of full-line wholesale suppliers available to pharmacies. Of these six pharmaceutical manufacturers, none raised a specific concern about possible coordinated behaviour post-transaction.

Views of Irish Pharmaceutical Healthcare Association

- 5.29 The IPHA, the representative body of 48 pharmaceutical manufacturers in the State, informed the Authority that none of its members had contacted the IPHA to express any concerns about the proposed transaction. Furthermore, during the Phase 1 investigation, the IPHA, at the behest of the Authority, also canvassed its member's views on the likely competitive impact of the proposed transaction. Of the 26 members who replied to the IPHA's short questionnaire, 17 expressed the view that the proposed transaction would have no significant effect on competition in the wholesale supply of human pharmaceutical drugs in the State. 4 replied 'Yes', 4 replied 'No Comment' and 1 replied 'Maybe'.

- 5.30 Similarly, 21 out of the 26 members who replied to the IPHA's short questionnaire expressed the view that the proposed transaction would not cause them to change the way in which they currently distribute human pharmaceutical drugs in the State. 4 replied 'No Comment' and 1 replied 'Yes'.

Views of the Department of Health and Health Service Executive

- 5.31 Both the Department of Health and HSE expressed the view to the Authority that there could be concerns about security of supply if there was only one full-line wholesaler active in the State in the future. The HSE expressed the view to the Authority that it could see no reason why the same level of service quality, consisting of 24-hour cover and twice daily delivery, would not be maintained by the remaining two full-line wholesalers post-transaction.

No Evidence of Coordinated Behaviour Pre-Proposed Transaction

- 5.32 There is no evidence of coordinated behaviour pre-proposed transaction in the market for the full-line wholesale supply of pharmacy-only human pharmaceutical drugs in the State.

²⁹ It is important to note that 13 out of the 16 pharmaceutical manufacturers who responded to the Authority's questionnaire indicated that they do not use the services of full-line wholesalers; rather they sell their products to pre-wholesalers. As described in Section 2 above, rather than operate their own distribution operation, most pharmaceutical manufacturers contract this function out to a pre-wholesaler, who provides a full range of services, including storage, marketing, invoicing and delivery. However, since all three pre-wholesalers currently active in the State are also active in full-line wholesaling, the Authority considers that the views of pharmaceutical manufacturers on the likely competitive impact of the proposed transaction on the full-line wholesale supply of human pharmaceutical drugs in the State are relevant.

- 5.33 Using monthly discount and sales data for each customer provided to the Authority by both Uniphar and CMR for the period 2010-2012, the results of the econometric analysis carried out on behalf of the Authority by Professor Patrick Paul Walsh indicate “a non-coordinated market in which Uniphar and CMR compete in terms of discounts to enhance their market share”.³⁰
- 5.34 Furthermore, the Authority contacted a wide range of third parties during its investigation and none raised any concern about coordinated behaviour pre-proposed transaction.

Conditions and Evidence Considered for Coordinated Behaviour

- 5.35 In assessing the potential for the proposed transaction to result in coordinated effects, the Authority will assess whether the conditions that are generally necessary for successful coordination are present or likely to arise:
- a) the ability to identify terms of coordination;
 - b) the ability to detect deviations from the terms of coordination, and the ability to punish deviations that would undermine the coordinated interaction; and
 - c) the extent to which existing competitive constraints and other factors would likely deter or disrupt effective coordination.
- 5.36 Factors useful in assessing these conditions are presented in Table 6 below.

Table 6: Conditions and evidence considered for coordinated behaviour

Condition	Evidence required
1. Identify common terms of coordination	Market transparency
	Symmetry of market shares and number of firms
	Market stability
	Frequency and size of transactions
	Homogeneity of products and firms
	Structural links – joint ventures, cross-shareholding
2. Costly to deviate (Internal stability):	(a) ability to detect deviations: Market transparency, market stability, frequency and size of transactions, structural links
	(b) ability and incentive to punish deviation: Credibility, effectiveness and speed of the mechanism of punishment, costs of

³⁰ The Authority was unable to obtain monthly discount and sales data for each customer from United Drug.

	the punishment versus benefits of coordination
3. Weak competitive constraints (external stability)	Past coordination/behaviour of the firms
	Entry and/or expansion
	Existence of "maverick" firm
	Other factors (e.g., buyer power, efficiencies)

Source: The Competition Authority

- 5.37 The first set of conditions relate to finding common terms of coordination. In other words, what set of conditions are conducive to coordination? The terms of the coordination, as stated in paragraph 4.20 of the Authority's *Merger Guidelines*, "need not be complex, but may follow simple precepts such as a common price, stable market shares, or some form of territorial restriction."³¹
- 5.38 The second set of conditions for successful coordination relates to stability among the coordinating firms ("internal stability"). It must be costly for firms to deviate from the coordinating price or whatever is agreed. This requires that deviation can be detected and punished credibly and effectively.
- 5.39 Finally, the third set of conditions relates to the presence of competitive constraints and other market conditions (external to the coordinating firms) that will remain in the market following the proposed transaction that would likely deter or disrupt effective coordination.

Reaching Common Terms of Coordination

- 5.40 In order to coordinate, firms need to achieve an understanding as to how to do so. This need not involve explicit agreements among competitors, or any communication between them, nor need it involve all firms or perfect coordination between firms. Coordinated behaviour can take many forms. In some markets, firms may coordinate their behaviour on prices in order to keep them above the competitive level. In other markets, coordination may aim at limiting production or the amount of new capacity brought to the market. Firms may also coordinate by dividing the market, for instance by geographic area or other customer characteristics.
- 5.41 Before analysing whether the relevant market presents those factors that facilitate the reaching of terms for coordination, it is helpful to identify the likely terms for coordination with respect to the proposed transaction.
- 5.42 One candidate for coordination is the discount (or set of discounts) granted by a pharmaceutical wholesaler to a pharmacy. The level of the discount depends on various factors including the value (€) of purchases made by the pharmacy and the length of credit given to the pharmacy (e.g., 0, 30, 60 days). A common understanding might be

³¹ *op cit.* note 21, page 19

reached in relation to the size of discount to be granted to pharmacies. For example, Uniphar and United Drug could adopt a rule such as, say, "grant no discount higher than 10%". As will be discussed below, however, the Authority considers that it is unlikely that such rules for coordination with respect to discounts could be reached and maintained post-transaction.

- 5.43 Another candidate for coordination is the frequency of delivery provided by a pharmaceutical wholesaler to a pharmacy. Frequency of delivery is one aspect of service quality which encompasses a number of other factors including the speed of delivery, the efficiency of delivery, and the number of emergency deliveries. For pharmacies where the full-line wholesaler is the primary wholesaler, all three full-line wholesalers active in the State currently make twice-daily deliveries to pharmacies on weekdays and one delivery on a Saturday.³² A common understanding might be reached in relation to the frequency of delivery to be provided to pharmacies. For example, Uniphar and United Drug could adopt a rule such as, say, "no more twice-daily deliveries to pharmacies in the State" or "no more twice-daily deliveries to pharmacies located in rural areas in the State".
- 5.44 In the following paragraphs, the Authority considers whether the relevant market presents characteristics such that these possible rules for coordination could be reached and maintained by Uniphar and United Drug post-transaction.

Market Transparency - Discounts

- 5.45 Under all the circumstances and evidence, the Authority considers that it is on balance unlikely that information concerning discount levels will be sufficiently transparent post-transaction to enable Uniphar and United Drug to reach and maintain a tacit agreement to coordinate on discounts.
- 5.46 As noted above, it is argued in the O'Toole Report #2 that "a complex multi-dimensional package is negotiated bi-laterally (between the individual pharmacist and the individual (primary) full-line wholesaler)." While it is true that negotiations between the full-line wholesaler and the pharmacy take place on a bilateral basis, the specific discount given to a pharmacy by a full-line wholesaler depends to a significant extent on three key factors:
- the value (€) of purchases made by the pharmacy;
 - the length of credit given to the pharmacy (e.g., 0, 30, 60 days); and
 - the negotiating power of each individual customer.

- 5.47 Uniphar informed the Authority that:

"[its] discount policy is heavily influenced by the time value of money and the risk profile of the customer. The risk profile of the customer is in part assessed by the

³² For pharmacies where the full-line wholesaler is the secondary wholesaler, in general only one delivery per day is made to the pharmacy.

customer's ability and willingness to trade with Uniphar without the requirement for lengthy credit terms. The allowable discounts are reduced by [...]% and [...]% for FM³³ and FFM³⁴ customer accounts respectively to reflect the cost of funds/time value of money."

- 5.48 United Drug informed the Authority that the outcome of its negotiations with pharmacies:

"[...]"

- 5.49 Although regular negotiations with customers provide full-line wholesalers with a general sense of the level of discounts offered by their competitors, full-line wholesalers do not currently have reliable information concerning the discount levels offered by competitors to different pharmacies. Anytime three firms become two following a merger, the level of transparency (and thus the likelihood of coordination) increases because there is only one rival to observe post-transaction. However, given all the facts and evidence before it for this market, the Authority is of the view that discounts are unlikely to be sufficiently transparent to enable Uniphar and United Drug to reach and maintain any agreement to coordinate on discounts.

- 5.50 Given the fact that the discount granted to each customer is negotiated on a bilateral basis and depends, in part, on the negotiating power of each individual customer, it is on balance difficult to see how a rule for coordination on discounts could be reached and maintained by Uniphar and United Drug post-transaction.

- 5.51 The Authority is therefore of the view that although the level of transparency regarding the discounts offered by full-line wholesalers may increase post-transaction, discounts are unlikely to be sufficiently transparent to enable Uniphar and United Drug to reach and maintain any agreement to coordinate on discounts. Thus, in light of all the relevant facts and evidence, the increase in the likelihood that Uniphar and United Drug would coordinate on discounts is not great enough that the proposed transaction will substantially lessen competition.

Market Transparency – The Frequency of Delivery

- 5.52 The degree of transparency regarding service quality is likely to be significantly higher than with respect to discounts. The key component of service quality is the frequency of delivery. Full-line wholesalers are likely to have good information concerning the frequency of the delivery service offered by their competitors.

- 5.53 When in the position of a pharmacy's primary full-line wholesaler, all three full-line wholesalers currently make twice-daily deliveries on weekdays and one delivery on a Saturday. This is the industry norm across all three full-line wholesalers and has been for a long time. Uniphar informed the Authority that:

"[...]."

³³ FM = "following month" = customer pays 30 days after month end statement.

³⁴ FFM = "current month" = customer pays 60 days after month end statement.

- 5.54 Uniphar informed the Authority that [...].
- 5.55 United Drug informed the Authority that [...].
- 5.56 In general, only one delivery per day is made to a pharmacy when the full-line wholesaler is in the position of a pharmacy's secondary full-line wholesaler. However, CMR informed the Authority that "[...]."
- 5.57 Regular negotiations with customers mean that full-line wholesalers are likely to have good information about the number of deliveries provided by their competitors. Furthermore, the level of transparency regarding the number of deliveries offered by full-line wholesalers will likely increase post-transaction since there will be only two full-line wholesalers remaining in the market.
- 5.58 In conclusion, there is likely to be a relatively high degree of transparency regarding the frequency of delivery post-transaction. As a result, the Authority is of the view that Uniphar and United Drug may be able to reach an agreement to coordinate on delivery frequency post-transaction. However, as will now be discussed, there are other conditions that must also be considered before the Authority can conclude that the proposed transaction will make it sufficiently more likely that Uniphar and United Drug will successfully coordinate on the frequency of delivery post-transaction.

Symmetry of Market Shares and Number of Firms

- 5.59 In the market for full-line pharmaceutical wholesaling in the State, United Drug should have a market share of around [50-55]% and Uniphar should have a market share of around [45-50]% post-transaction.³⁵ Thus, the market shares of United Drug and Uniphar should become more symmetric as a result of the proposed transaction which may make it easier for both firms to coordinate on the frequency of delivery.
- 5.60 The economic literature has shown that it is easier to coordinate among few players than among many and therefore the number of firms in a market is an important factor. Post-transaction, there will only be two full-line wholesalers active in the State which may also make it easier to coordinate on the frequency of delivery.³⁶

Market Stability

- 5.61 The economic literature has shown that it is easier to coordinate when demand and supply conditions are relatively stable than when they are frequently changing (e.g., because of the ease of entry by new firms or rapid, significant product innovations).
- 5.62 Market share data for the full-line pharmaceutical wholesaling market in the State over period 2006-2012 is presented above in Table 3 in Section 4. Although no new full-line wholesaler has entered the market, there was some variation in market shares between 2006 and 2010. Since 2010, however, market shares have been quite stable.

³⁵ As noted in Section 4 above, given the general absence of contracts between full-line wholesalers and pharmacies, it is difficult to predict with accuracy the likely market shares of the two remaining full-line wholesalers post-transaction.

³⁶ There will, however, be sales of human pharmaceutical drugs to pharmacies in the State by short-line wholesalers/parallel importers and DTP sales by pharmaceutical manufacturers.

- 5.63 United Drug's market share declined from [50-55]% in 2007 to [45-50]% in 2009 before rising significantly to [50-55]% in 2012. In contrast, Uniphar's market share increased from [25-30]% in 2007 to [30-35]% in 2009 before declining dramatically to [25-30]% in 2010. Since 2010, Uniphar's market share in full-line pharmaceutical wholesaling in the State has been stable. Finally, CMR's market share over the period 2006-2011 has been very stable around [20-25]%. CMR's market share declined to [15-20]% in 2012.
- 5.64 Data for the total pharmaceutical wholesaling sector (including parallel imports and DTP sales) in the State over period 2006-2012 is presented in Table 4 above in Section 4. In contrast to United Drug whose share was stable (between [40-45]-[40-45]%) over the period 2006-2010, a significant decline in share were experienced by both Uniphar and CMR over the same period.
- 5.65 Uniphar's share of the total pharmaceutical wholesaling sector declined from [25-30]% in 2006 to [25-30]% in 2010, while CMR's market share fell from [15-20]% in 2006 to [15-20]% in 2010. The loss in market share experienced by both Uniphar and CMR over this period appears to have been as a result of the growth of DTP sales (which grew from 5.3% in 2006 to 9.2% in 2010) and parallel imports (which was 12.4% in 2010).
- 5.66 However, both Uniphar and CMR's share of the total pharmaceutical wholesaling sector in the State has stabilised since 2010 while parallel imports have fallen back to 7.1% by 2012. Recent government intervention to lower the price of human pharmaceutical drugs (through the HSE/IPHA and HSE/APMI agreements) has reduced sales by parallel importers. DTP sales have continued to grow, reaching 13% by 2012.
- 5.67 In conclusion, market shares have been relatively (but not completely) stable in recent years. The share of total sales in the pharmaceutical wholesaling sector in the State accounted for by the three full-line wholesalers has been relatively stable since 2010. The Authority therefore does not consider that there is enough market instability to prevent Uniphar and United Drug from reaching common terms for coordination on delivery frequency.

Frequency and size of transactions

- 5.68 The existence of frequent and regular orders or transactions between suppliers and customers can make it easier for suppliers to reach a common ground of understanding of how coordination might work.
- 5.69 The pharmaceutical wholesaling market in the State is characterised by frequent (i.e., daily) orders made to full-line wholesalers by pharmacies through interchangeable electronic ordering systems. There are no exclusive supply agreements or long-term contracts between full-line wholesalers and pharmacies. These characteristics may make it easier for both Uniphar and United Drug to coordinate on the frequency of delivery.

Product and Firm Homogeneity

- 5.70 In the case of product homogeneity, the delivery service provided by each full-line wholesaler to its customers is largely homogenous. The

electronic ordering systems used by the three full-line wholesalers are interchangeable. The same pharmaceutical drugs are sold by all three full-line wholesalers and each stock approximately 10,000 SKUs. All three full-line wholesalers offer twice daily delivery on weekdays and one delivery on a Saturday to pharmacies where the full-line wholesaler is in the position of primary supplier.

- 5.71 With respect to firm homogeneity, all three full-line wholesalers currently supply to pharmacies on a nationwide basis and all three also act as pre-wholesalers in the State. Whereas Uniphar has four distribution depots in the State (Dublin, Limerick, Cork, and Sligo), United Drug has three distribution depots (Dublin, Limerick, and Ballina). Post-transaction, as noted above, the market shares of United Drug and Uniphar will become more symmetric.
- 5.72 It is also the case that both Uniphar and United Drug will have excess capacity post-transaction.³⁷ Uniphar recently “invested more than €65m in developing a new distribution facility located in the Citywest Business campus. This new facility offers some 50,000sq ft of modern offices over two three storey blocks, 180,000 sq. ft of temperature controlled warehousing (air conditioned), 10,000 pallet spaces for ambient storage, in excess of 300 cold storage pallet spaces, and also increased controlled drug storage up to 200 pallet spaces. It is a state of the art storage, warehousing and office facility, specialised to meet the exacting needs of the pharmaceutical industry.”³⁸
- 5.73 Uniphar currently has a lot of excess capacity in its Citywest depot. The parties state in the notification that the proposed transaction “will also allow Uniphar to utilise current spare capacity at its Citywest facility. The proposed transaction represents a natural evolution of this sector in light of these changes and will lead to the combination of two complementary distribution networks, with consequent significant (and necessary) savings in distribution costs and other economics of scale.”
- 5.74 United Drug informed the Authority that:
- “[...]”
- 5.75 In conclusion, the Authority considers that there is a relatively high degree of homogeneity between Uniphar and United Drug which will remain the case post-transaction. Furthermore, both firms will have excess capacity post-transaction. These characteristics may make it easier for both Uniphar and United Drug to coordinate on the frequency of delivery.

Structural Links – The Pharmaceutical Distribution Federation

- 5.76 According to information provided in the notification, the Pharmaceutical Distribution federation (“PDF”) “represents full-line wholesalers in the State within GIRP (the European Association of

³⁷ The O’Toole Report #1 states that “For serious co-ordinated price effects concerns to arise within the wholesaling of pharmaceutical products... there would need to be output price transparency and little/no excess capacity (post the acquisition).” The Authority disagrees with this view. In order for coordinated behaviour to be effective, it helps if the merging parties have some excess capacity in order to credibly threaten to punish deviations from any agreed terms of coordination. Otherwise, any attempt to coordinate behaviour may be less likely to be successful.

³⁸ <http://www.uniphar.ie/divisions/aliphar/key-activities/warehousing-distribution> as accessed on 23 April 2013.

Pharmaceutical Wholesalers) and in relation to other industry matters.” The current interim Chairperson of the PDF is Sean Coleman who is also Sales Manager in CMR. The existence of the PDF, while clearly not unlawful in itself, may help to facilitate tacit collusion between Uniphar and United Drug post-transaction.

Conclusion on Reaching Common Terms of Coordination

- 5.77 With respect to the likelihood of coordination on discounts, the Authority considers that the full-line pharmaceutical wholesaling market does not present the characteristics such that rules for coordination are likely to be reached and maintained post-transaction. Under all circumstances and evidence, although the level of transparency regarding discounts may increase post-transaction, discounts are unlikely to be sufficiently transparent to enable Uniphar and United Drug to reach and maintain any tacit agreement to coordinate on discounts.
- 5.78 With respect to delivery frequency, there is currently a relatively high degree of transparency in the pharmaceutical wholesaling market in the State. Furthermore, the degree of transparency regarding delivery frequency is likely to increase post-transaction. Thus, for the reasons outlined above, the Authority considers that the full-line pharmaceutical wholesaling market in the State appears to present the characteristics such that rules for coordination on delivery frequency could be reached by Uniphar and United Drug post-transaction.
- 5.79 However, as described above, there are other conditions that must be met before the Authority could conclude that the proposed transaction will substantially harm competition by making it more likely that Uniphar and United Drug will engage in coordinated interaction.

Ability and Incentive to Deviate and Costs of Monitoring Deviations

- 5.80 The Authority now examines whether Uniphar and United Drug would have the incentive to deviate from any agreement to coordinate on delivery frequency post-transaction.
- 5.81 As noted above, the Authority considers that there is likely to be a high degree of transparency regarding the frequency of delivery post-transaction. This may make it relatively easy for both full-line wholesalers to monitor the number of deliveries being made by their rival post-transaction. Furthermore, it is also the case that both Uniphar and United Drug will have excess capacity post-transaction which means that both parties may be able to credibly threaten to punish any deviations by their rival from any agreement to coordinate on delivery frequency.
- 5.82 The Authority considers, however, that there is likely to be an incentive on the part of both Uniphar and United Drug to deviate from any agreement to coordinate on the frequency of delivery in order to maintain their position as a pharmacy’s primary wholesaler. The cost of deviating is low since both Uniphar and United Drug already have the electronic ordering system in place, the distribution network and the spare capacity to deliver to pharmacies more than once per day. There is no fixed cost associated with increasing the frequency of delivery and this can be achieved quickly.

- 5.83 It is true that pharmacies do not switch their primary full-line wholesaler on a regular basis. Switching data for 2010-2012 provided to the Authority by both CMR and Uniphar confirms that the levels of switching are low.³⁹ This was also confirmed in the Ipsos MRBI survey of pharmacies. However, pharmacies also confirmed in their response to the Ipsos MRBI survey that the costs of switching full-line wholesaler (primary or secondary) are not high. The IPU also expressed the view to the Authority that it is not difficult for a pharmacy to switch its full-line wholesaler. Thus, the threat of switching full-line wholesaler by a pharmacy will be sufficiently credible (due to the low costs of switching) to ensure that the incentive for both United Drug and Uniphar to deviate from any agreement post-transaction will outweigh the incentive to coordinate on delivery frequency.
- 5.84 The Authority is of the view that the benefit from deviating (by increasing the number of deliveries to pharmacies) is likely to outweigh the increased cost of extra deliveries which is not likely to be high.⁴⁰ As noted above, there is a strong incentive for a full-line wholesaler to maintain its position as a pharmacy's primary wholesaler and one way of achieving this is through more frequent deliveries.⁴¹ If Uniphar and United Drug do attempt to coordinate on delivery frequency post-transaction, it is also possible that emergency deliveries may become a competitive tool through which full-line wholesalers compete to prevent a customer from switching to a rival full-line wholesaler.⁴² This may further undermine any attempt to coordinate on delivery frequency post-transaction.
- 5.85 Finally, both Uniphar and United Drug are likely to continue competing on discounts post-transaction which may further undermine the ability of both parties to coordinate effectively on delivery frequency. Any agreement to coordinate on delivery frequency post-transaction may be unstable (and therefore unlikely to be maintained) if at the same time Uniphar and United Drug are competing on discounts.
- 5.86 The Authority is of the view that on balance any attempt by Uniphar and United Drug to coordinate on delivery frequency post-transaction is likely to break down since the incentive to compete in order to maintain their position as a pharmacy's primary wholesaler is likely to outweigh the incentive to coordinate.

Competitive Constraints

- 5.87 The Authority considers that the presence of short-line wholesalers/parallel importers may deter or disrupt any attempt by Uniphar and United Drug to tacitly coordinate on discounts and/or delivery frequency post-transaction.

³⁹ In addition to loyalty to the primary full-line wholesaler, a factor cited by the IPU in discussions with the Authority, low levels of switching by pharmacies may also be indicative of intense competition between United Drug, Uniphar and CMR.

⁴⁰ The marginal cost of an extra delivery is likely to be very small.

⁴¹ As noted in section 2 above, the Authority understands that on average pharmacies purchase approximately 90% of their supplies (by value) of human pharmaceutical drugs from their primary full-line wholesaler.

⁴² Emergency deliveries are not currently a major feature of the pharmaceutical wholesaling market in the State. For example, Uniphar informed the Authority that "the number of emergency deliveries is likely to be a maximum of one or two deliveries per week." The low number of emergency deliveries is unsurprising given the number of daily deliveries to pharmacies currently being made by full-line wholesalers.

- 5.88 Any attempt by Uniphar and United Drug to tacitly coordinate on discounts post-transaction may prompt short-line wholesalers/parallel importers to expand the range of pharmaceutical products that they stock in order to entice pharmacies to switch some of their business to short-line wholesalers/parallel importers.
- 5.89 Short-line wholesalers/parallel importers may not even need to expand the range of pharmaceutical products that they stock in order to win business from the two remaining full-line wholesalers post-transaction. Any decline in discounts resulting from tacit coordination by Uniphar and United Drug post-transaction may prompt pharmacies to switch some of their business at the margin to short-line wholesalers/parallel importers. Although the ability of pharmacies to switch would only apply to the specific types of human pharmaceutical products stocked by the short-line wholesalers/parallel importers, this threat may be sufficient to destabilise, and ultimately deter, any tacit agreement to coordinate on discounts by Uniphar and United Drug. It is significant, in this regard, that the discounts given by full-line wholesalers to pharmacies are not product-specific; rather the discount given applies across all human pharmaceutical products purchased and it partly depends on the total value of purchases made by the pharmacy. Thus, Uniphar and United Drug may have incentive to cheat on any tacit agreement to coordinate on discounts in order to prevent a loss of sales to short-line wholesalers/parallel importers.
- 5.90 Of course, should short-line wholesalers/parallel importers expand the range of pharmaceutical products that they stock in response to a decline in discounts resulting from tacit coordination between Uniphar and United Drug, the competitive threat exerted by short-line wholesalers/parallel importers may be even greater, thereby further threatening to destabilise any tacit agreement to coordinate on discounts.
- 5.91 Similarly, any attempt by Uniphar and United Drug to tacitly coordinate on delivery frequency post-transaction may prompt short-line wholesalers/parallel importers to increase the number of deliveries to pharmacies in order to win some business from the two remaining full-line wholesalers.⁴³ This may disrupt any attempt by Uniphar and United Drug to tacitly coordinate on delivery frequency post-transaction.

Conclusion on Coordinated Effects

- 5.92 For the reasons set out above and considering all the evidence, the Authority considers that on balance the proposed transaction will not make it sufficiently more likely that Uniphar and United Drug will engage in coordinated behaviour in the market for the full-line wholesale supply of pharmacy-only human pharmaceutical drugs in the State as to substantially lessen competition.

Unilateral Effects

- 5.93 Unilateral effects refer to a situation where the anti-competitive effect of a merger or acquisition results from non-coordinated action by market players. Unilateral effects arise when, as a result of a merger

⁴³ Short-line wholesalers/parallel importers generally only deliver once per day to pharmacies in urban areas and the following day to pharmacies located outside urban areas.

or acquisition, "the merged firm finds it profitable to raise price, irrespective of the reaction of its competitors or customers. The term unilateral effects also captures the situation where, as a result of the merger, the non-cooperative equilibrium changes, and some or all of the firms modify their behaviour."⁴⁴ In this instance, the question is whether Uniphar would have both the ability and incentive to unilaterally raise prices or otherwise harm competition post-transaction.

Views of the Undertakings Involved

5.94 The O'Toole Report #1 makes the following arguments in relation to unilateral effects:

"For serious unilateral price effects concerns to arise in the context of the acquisition, it would be necessary to establish that Uniphar and Cahill May Roberts are the closest competitors to each other (i.e. that United Drug is significantly different from its two full-line wholesaling competitors). It is clear, however, that at a general level each of the three full-line wholesalers is easily substitutable for the other two as they each perform essentially identical functions."

"As such, any major competitive environment concerns with respect to the acquisition would likely centre on potential co-ordinated price effects concerns or on some combination of both unilateral and co-ordinated price effects concerns. More specifically, from a unilateral price effects concerns perspective, should the new entity unilaterally (and hypothetically) reduce its discounts or its package of services more generally to all pharmacies it is clear that a very significant proportion of these pharmacies would immediately move their wholesaling business to United Drug (as well as to short-line wholesalers and pre-wholesalers/LSPs). As such, a very significant proportion of the benefit of a price increase by the new entity would accrue to parties other than the new entity."

Views of the Authority

5.95 Uniphar will only have the incentive to exercise market power by reducing its discounts and/or service quality post-transaction if it would be profitable to do so. In order for this to occur, Uniphar and CMR should be close competitors to each other in the full-line wholesale supply of pharmacy-only human pharmaceutical drugs in the State. If this is the case, a decrease in discounts by Uniphar post-transaction could result in little or no switching by pharmacies making it profitable for Uniphar to reduce its discounts.

⁴⁴ *op cit.* note 21, paragraph 4.4, page 13/14.

- 5.96 The Authority considers that each of the three full-line wholesalers is substitutable for the other two as they each sell more or less the same human pharmaceutical drugs and offer a similar delivery service to pharmacies. The internal documentation provided to the Authority by Uniphar and CMR clearly indicates that both full-line wholesalers perceive United Drug to be a close competitor in full-line wholesaling in the State. Furthermore, notwithstanding that switching data for 2010-2012 provided to the Authority by both CMR and Uniphar indicates low levels of switching by pharmacies, the Authority considers it significant that [...]% of the pharmacies that switched their business away from Uniphar during this three-year period moved to United Drug.⁴⁵ Similarly, [...]% of the pharmacies that switched their business away from CMR during this three-year period moved to United Drug.⁴⁶ Thus, it is clear from this switching data that United Drug is a close competitor of both Uniphar and CMR in full-line wholesaling in the State.
- 5.97 The Authority therefore considers that Uniphar will have neither the ability nor the incentive to exercise market power by reducing its discounts and/or the frequency of its deliveries post-transaction. Any such attempt by Uniphar post-transaction will prompt pharmacies to switch to United Drug.⁴⁷ Moreover, the evidence indicates that United Drug has the capacity to expand output and absorb any increase in business resulting from pharmacies switching away from Uniphar post-transaction.⁴⁸
- 5.98 On this basis, it is the Authority's view that the proposed transaction will not lead to a unilateral decrease in discounts or delivery frequency as Uniphar will have neither the incentive nor the ability to do so post-transaction.
- 5.99 The Authority also considered whether there might be an incentive for Uniphar and United Drug to accommodate any exercise of market power by its rival full-line wholesaler post-transaction. In a market where there are only two full-line wholesalers, the product is homogenous and the entry of a new full-line wholesaler is unlikely, it may not be in the interest of the market participants to compete vigorously as price competition could trigger a price war to the detriment of the two remaining full-line wholesalers.
- 5.100 The Authority considers that on balance Uniphar and United Drug will not have an incentive to accommodate any exercise of market power by its rival full-line wholesaler post-transaction. The internal documentation provided to the Authority by Uniphar and CMR indicates that [...].⁴⁹ As can be seen in Table 3 in Section 4 above, United Drug has experienced a significant increase in its market share since 2009, primarily at the expense of Uniphar. The Authority considers that on balance United Drug is likely to continue to compete vigorously with Uniphar post-transaction and vice versa.

⁴⁵ [...]% of the pharmacies gained by Uniphar during this three-year period were customers that had switched away from United Drug. [...]% of the pharmacies gained by Uniphar during this three-year period were new customers (predominantly a new pharmacy opening its business).

⁴⁶ [...]% of the pharmacies gained by CMR during this three-year period were new customers (i.e., a new pharmacy opening its business).

⁴⁷ As noted above, the costs of switching full-line wholesaler (primary or secondary) are not high.

⁴⁸ As noted above, United Drug informed the Authority that "[...]"

⁴⁹ For example, in an internal document provided by CMR to the Authority entitled [...] In a different internal document provided by CMR to the Authority entitled [...].

5.101 The Authority is of the view that on balance it is more likely that Uniphar and United Drug will respond to any price rise (i.e., decline in discounts) or reduction in delivery frequency by its rival full-line wholesaler post-transaction by not fully matching or accommodating such a price rise and instead seeking to win business from its rival through lower prices (i.e., higher discounts) or more frequent deliveries. As noted above, both Uniphar and United Drug have the capacity to expand output and absorb any increase in business resulting from pharmacies switching away from their rival full-line wholesaler post-transaction. This is likely to lead to one of the two remaining full-line wholesalers responding by increasing its discounts or delivery frequency in order to prevent its customers from switching to its rival.

5.102 The Authority also considers that the competitive constraint exercised by short-line wholesalers/parallel importers on full-line wholesalers may also act as a disincentive to Uniphar and United Drug accommodating any price rise by its rival full-line wholesaler post-transaction. A new equilibrium post-transaction with lower discounts and/or less frequent deliveries is on balance unlikely to be stable as it will provide an opportunity for short-line wholesalers/parallel importers to take some business at the margin away from the two remaining full-line wholesalers. This is likely to prompt retaliatory action from Uniphar and/or United Drug in the form of higher discounts or more frequent deliveries thereby making it on balance less likely that Uniphar and United Drug would accommodate any exercise of market power by its rival full-line wholesaler post-transaction.

5.103 In conclusion, on the basis of the above, it is the Authority's view that on balance the proposed transaction will not lead to a unilateral exercise of market power in the market for the full-line wholesale supply of pharmacy-only human pharmaceutical drugs in the State.

The Pre-wholesale Supply of Pharmacy-only Human Pharmaceutical Drugs in the State

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

Coordinated Effects

Views of the Undertakings Involved

5.105 As noted in section 3 above, the O'Toole Report #1 states that "the product dimension to the acquisition is the "wholesaling" of pharmacy-only human pharmaceutical products, i.e. getting pharmaceutical product from manufacturer to retailer." The parties expressed the view that the relevant market affected by the proposed transaction encompasses both the pre-wholesale and wholesale supply of pharmacy-only human pharmaceutical drugs in the State. Thus, the parties did not express any views in relation to the competitive impact of the proposed transaction in the market for the pre-wholesale supply of pharmacy-only human pharmaceutical drugs in the State.

Views of the Authority

5.106 The Authority considers that the proposed transaction will not make it sufficiently more likely that Uniphar and United Drug will engage in tacit coordinated behaviour as to substantially lessen competition in the pre-wholesale supply of pharmacy-only human pharmaceutical drugs in the State. This view is based on the following reasons.

Views of Pharmaceutical Manufacturers

5.107 11 out of the 16 pharmaceutical manufacturers who responded to the Authority's questionnaire expressed no concern about the impact of the proposed transaction in the pre-wholesale supply of human pharmaceutical drugs in the State. Of these 11 pharmaceutical manufacturers, four expressed the view that the proposed transaction may enhance competition since Uniphar may be in a better position to compete with United Drug in the pre-wholesale supply of human pharmaceutical drugs in the State.

5.108 Only five out of the 16 pharmaceutical manufacturers raised a competition concern about the impact of the proposed transaction in the pre-wholesale supply of human pharmaceutical drugs in the State. All five manufacturers expressed the concern that the proposed transaction may lead to a decline in the level of price competition between the remaining pre-wholesalers. Of these five pharmaceutical manufacturers, none raised a specific concern about possible coordinated behaviour post-transaction.

Conditions and Evidence Considered for Coordinated Behaviour

5.109 As noted above, when assessing the potential for coordinated effects to arise post-transaction, the Authority examines whether the conditions that are generally necessary for successful coordination are present. The first condition, as outlined in Table 6 above, is the ability to identify terms of coordination post-transaction.

5.110 The Authority considers that the market for the pre-wholesale supply of pharmacy-only human pharmaceutical drugs in the State does not present the characteristics such that possible rules for coordination could be reached and maintained by United Drug and Uniphar post-transaction. In particular, there does not appear to be sufficient transparency concerning the terms of the contracts agreed between pharmaceutical manufacturers and pre-wholesalers in the State.

5.111 As described in Section 2 above, pharmaceutical manufacturers distribute their products through pre-wholesalers such as Allphar (Uniphar) and Movianto (CMR) who act on their behalf as agents. Pharmaceutical manufacturers pay a fee for these pre-wholesaling services. Pharmaceutical manufacturers informed the Authority that they tender out the contract to provide pre-wholesale services on a regular basis prior to selecting their preferred pre-wholesaler. The precise duration of the contract varies from manufacturer to manufacturer but is generally between one to three years.

5.112 The fee charged by pre-wholesalers is typically set on a bilateral basis through negotiations with the pharmaceutical manufacturer which does not suggest price transparency. Negotiations between a pharmaceutical manufacturer and pre-wholesaler typically cover a number of issues including the fee charged by the pre-wholesaler and type of products to be distributed on behalf of the pharmaceutical

manufacturer. The specific details of each tender and the negotiations that follow are unlikely to be known to competing pre-wholesalers. Moreover, although there will be only two pre-wholesalers post-transaction, the availability of the DTP route to market adds a layer of uncertainty.⁵⁰ Finally, the Authority considers it significant that one of the 16 pharmaceutical manufacturers who responded to the Authority's questionnaire stated that they currently use an LSP to provide pre-wholesaling services in the State.

Conclusion on Coordinated Effects

5.113 The Authority considers that the proposed transaction will not make it sufficiently more likely that Uniphar and United Drug will engage in coordinated behaviour in the market for pre-wholesale supply of pharmacy-only human pharmaceutical drugs in the State as to substantially lessen competition.

Unilateral Effects

Views of the Undertakings Involved

5.114 As noted above, the parties did not express any views in relation to the competitive impact of the proposed transaction in the market for the pre-wholesale supply of pharmacy-only human pharmaceutical drugs in the State.

Views of the Authority

5.115 Uniphar will have the incentive to exercise market power by increasing the fee charged to pharmaceutical manufacturers for its pre-wholesale services post-transaction only if it would be profitable to do so. The Authority considers, however, that each of the three pre-wholesalers active in the State is substitutable for the other two as they each provide more or less the same pre-wholesale services to pharmaceutical manufacturers.

5.116 The Authority considers that Uniphar will have neither the ability nor the incentive to exercise market power by unilaterally increasing the fee charged to pharmaceutical manufacturers for its pre-wholesale services post-transaction. Any such attempt by Uniphar post-transaction will prompt pharmaceutical manufacturers to switch to United Drug. As noted above, United Drug has the capacity to expand output and absorb any increase in its pre-wholesale business resulting from manufacturers switching away from Uniphar post-transaction. Furthermore, as noted above, although there will be only two pre-wholesalers post-transaction, the availability of the DTP route to market adds a layer of uncertainty.

5.117 On this basis, it is the Authority's view that the proposed transaction will not lead to a unilateral increase in the price of pre-wholesale services as Uniphar will have neither the incentive nor the ability to do so post-transaction.

⁵⁰ The IPHA expressed the view to the Authority that "when a pharmaceutical manufacturer is negotiating with a pre-wholesaler, both parties are aware that the pharmaceutical manufacturer has the option of selling the products DTP."

6. SECTION SIX: OTHER AREAS OF OVERLAP

Introduction

6.1 As described in Section 3 above, in addition to the wholesale supply and pre-wholesale supply of pharmacy-only human pharmaceutical drugs in the State, there are three other markets affected by the proposed transaction:

- The supply of front-of-counter and non-pharmacy only products in the State;
- The supply of veterinary drugs in the State; and
- The supply of medical supplies in the State.

6.2 This section examines the competitive impact of the proposed transaction in each of these three markets.

The Supply of Front-of-Counter and Non-Pharmacy Only Products in the State

Views of the Undertakings Involved

6.3 The parties state in the notification that “in addition to pharmacies, these products are stocked by many other outlets, including supermarkets, grocery stores and department stores. There are many wholesalers, LSPs and pre-wholesalers in the State supplying these products. Given the size of this sector, the combined market share of the parties is minimal. Even if supply to pharmacies is considered alone, the parties’ market share is still very low.”

6.4 The parties state that “the retail consumer goods market is worth approximately €10 billion and the parties estimate that sales to pharmacies account for approximately 4% of that amount.⁵¹ Uniphar made sales of approximately €[...] and CMR made sales of approximately €[...] in 2012. On this basis, the parties estimate that their combined market share is significantly less than [0-5]%.”

6.5 The parties state that they “are not in a position to provide estimates of their competitors’ market shares. Given the numerous manufacturers, and the wide variety of retail outlets that stock front-of-counter and non-pharmacy only products, there are a large number of wholesalers, pre-wholesalers and LSPs of such products in the State. These would include Ngage/Johnson Brothers, Procter & Gamble, Allegro, J&J Consumer; Unilever; and L’Oréal. Furthermore, large retailers such as Tesco, Boots and Dunnes Stores typically have their own distribution networks for such products.”

Views of the Authority

6.6 The Authority considers that the proposed transaction raises no competition concerns in the market for the supply of front-of-counter and non-pharmacy only products in the State.

⁵¹ Source: AC Nielsen data and estimates provided by the parties.

- 6.7 First, Uniphar's market share in the wholesale supply of front-of-counter and non-pharmacy only products in the State will be minimal (less than [0-5]%) post-transaction.
- 6.8 Second, 55% of pharmacies surveyed by Ipsos MRBI on behalf of the Authority expressed the view that the proposed transaction would have no effect on competition in the supply of front-of-counter and non-pharmacy only products in the State. Only 19% expressed the view that the proposed transaction would have an effect on competition in the wholesale supply of front-of-counter and non-pharmacy only products in the State. 22% replied "Don't Know". 4% did not respond to the question.
- 6.9 Third, Uniphar will face competition from a number of competing suppliers of front-of-counter and non-pharmacy only products in the State including Johnson Brothers, Procter & Gamble, Allegro, Johnson & Johnson, Unilever, and L'Oréal.

The Supply of Veterinary Drugs in the State

Views of the Undertakings Involved

- 6.10 The parties state that "Uniphar estimates that its sales to veterinary surgeons and to pharmacies represent [5-10]% of this total market. CMR's sales in this sector are negligible (less than €[...]). The parties are not in a position to provide estimates of their competitors' market shares. However, the parties note that there are a number of other suppliers of veterinary drugs in the State including pre-wholesalers and LSPs such as United Drug and Acravet, and wholesalers such as C&M, Chanelle, Co-op and Agrihealth."
- 6.11 The parties state in the notification that their "activities in the supply of veterinary drugs market are very limited. Furthermore, the parties face strong competition from other market players, including specialist and general veterinary pre-wholesalers/LSPs and wholesalers. Veterinary drug manufacturers regularly re-negotiate contracts and replace their LSP/pre-wholesaler. It is easy (and common) for manufacturers to change their LSP/pre-wholesale provider. These contracts typically last for three years. Furthermore, barriers to entry are low, particularly in the LSP channel."
- 6.12 The parties state that "in respect of the wholesale market, a wider variety of products than those stocked by CMR or Uniphar would be available from veterinary specialist wholesalers in the State. These products are sold by (primarily) veterinary surgeons, with a limited amount sold from pharmacies and other outlets. This is thus a competitive market, in which CMR and Uniphar are very small players."
- 6.13 The parties state that there is "a vertical dimension to the parties' overlap in the supply of veterinary drugs, as both CMR and Uniphar are active in the LSP/pre-wholesale supply of veterinary drugs to wholesalers, and (particular in respect of Uniphar) the supply of veterinary drugs from their wholesale divisions to pharmacies/veterinary surgeons. LSPs/pre-wholesalers must generally distribute the relevant manufacturer's products to all wholesalers (or to other specified customer groups as directed by the manufacturer). Manufacturers would simply change to another LSP/pre-wholesaler were the parties to withhold supplies from downstream parties. No

vertical foreclosure issues thus arise in this regard. In any event, given the parties very limited wholesale activities in the supply of veterinary drugs, the merged entity would have no incentive to foreclose downstream market participants.”

- 6.14 The parties state that “where LSPs/pre-wholesalers have contracts in respect of the direct supply of veterinary drugs to veterinary surgeons/pharmacies, such products are generally not supplied to wholesalers (as this involves direct supplies by manufacturers, bypassing the wholesale channel). Given that the merged entity will have negligible activities at retail level, there would be no incentive to withhold such supplies from pharmacies/veterinary surgeons. In any event, manufacturers would not allow their LSP/pre-wholesaler to limit supplies in this way.”

Views of the Authority

- 6.15 The Authority considers that the proposed transaction raises no competition concerns in the market for the supply of veterinary drugs in the State.
- 6.16 First, CMR’s wholesale sales of veterinary drugs to customers (i.e., veterinary surgeons and pharmacies that sell veterinary drugs) in the State in 2012 was negligible (€[...] which represents a share of around [0-5]%). Thus, the increment in Uniphar’s share of the wholesale supply of veterinary drugs in the State post-transaction will be negligible.
- 6.17 Second, all eight veterinary surgeons who responded to the Authority’s questionnaire expressed no competition concerns about the proposed transaction.⁵² All eight expressed the view that there are a number of alternative suppliers of veterinary drugs to the merging parties in the State.
- 6.18 Third, Uniphar will face competition post-transaction from a number of competing specialist wholesalers of veterinary drugs in the State including C&M Vetlink, Chanelle Veterinary, Co-operative Animal Health Limited, and Agrihealth.
- 6.19 Fourth, the Authority considers that the proposed transaction raises no vertical foreclosure concern regarding the supply of veterinary drugs in the State. Both Uniphar and CMR are pre-wholesalers of veterinary drugs. Uniphar (via Allphar) is active in the pre-wholesale supply of veterinary drugs in the State on behalf of [...]. CMR (via Movianto) is the pre-wholesale supplier in the State on behalf of [...]. CMR informed the Authority that [...]. [...] veterinary drugs manufacturers have the ability to switch to a different pre-wholesaler should Uniphar decide to withhold supplies of their products from veterinary drugs wholesalers (e.g., C&M Vetlink, Chanelle Veterinary, Co-operative Animal Health Limited, and Agrihealth) post-transaction.
- 6.20 Manufacturers of veterinary drugs who currently use the pre-wholesale services of Uniphar or CMR expressed no competition concerns to the Authority about the proposed transaction.

⁵² The Authority contacted ten veterinary surgeons in total, the names of which were taken from separate lists provided to the Authority by both Uniphar and CMR of their top 5 veterinary drugs customers in the State. Of these ten veterinary surgeons, eight responded to the Authority’s questionnaire.

- 6.21 Furthermore, given that Uniphar will have a relatively small share of the wholesale supply of veterinary drugs in the State (around [5-10]%) post-transaction, it will have no incentive to foreclose competing wholesale suppliers such as C&M Vetlink, Chanelle Veterinary, Co-operative Animal Health Limited, and Agrihealth.

The Supply of Medical Supplies in the State

Views of the Undertakings Involved

- 6.22 The parties estimate that “the total value of the medical supplies market is €350 million. Uniphar estimates that its share of this market is approximately [0-5]%, and CMR that its share is approximately [0-5]%. The parties are not in a position to provide estimates of their competitors’ market shares. However, the parties note that there are a number of other providers of such products in the State, including pre-wholesalers/LSPs such as United Drug, DCC Healthcare/Fannin, Medisource and Fleming Medical, and wholesalers such as United Drug, Murray Medical and Salts Healthcare Limited.”
- 6.23 The parties state that “medical supplies manufacturers regularly re-negotiate contracts and replace their LSP/pre-wholesaler. It is easy (and common) for manufacturers to change their LSP/pre-wholesale provider. Furthermore, barriers to entry are low, particularly in the LSP channel. Moreover, many hospitals in the State are publicly funded and thus subject to EU/Irish procurement rules. The supply of these products is, depending on the value of the relevant contract, thus likely to be subject to a public award process where any interested party may participate. This sector is thus highly contestable.”
- 6.24 The parties state that “where LSPs/pre-wholesalers have contracts with manufacturers in respect of the direct supply of medical supplies to hospitals/pharmacies, they will generally not supply such products to other wholesalers (as this distribution channel generally involves the manufacturer by-passing the wholesale channel). However, given that the merged entity will have negligible activities at the “retail level” (i.e., community pharmacies, hospitals, clinics) there would be no incentive to withhold supplies from these market players. In any event, manufacturers would not allow their LSP/pre-wholesaler to limit supplies in this way.”
- 6.25 The parties state that “as neither CMR nor Uniphar’s wholesale divisions are active in the wholesale supply of medical supplies, it is submitted that no vertical competition concerns in respect of the supply of medical supplies arise from the proposed transaction.”

Views of the Authority

- 6.26 The Authority considers that the proposed transaction raises no competition concerns in the market for the supply of medical supplies in the State.
- 6.27 As noted above, neither CMR nor Uniphar are active in the wholesale supply of medical supplies in the State. Uniphar (via Allphar) is active in the pre-wholesale supply of medical supplies in the State on behalf of [...]. CMR (via Movianto) is the pre-wholesale supplier in the State on behalf of [...].

6.28 The Authority contacted six manufacturers of medical supplies who currently use the pre-wholesale services of either Uniphar or CMR. All six manufacturers expressed no competition concerns about the proposed transaction.

Ancillary Restraints

6.29 The Share Purchase Agreement contains a number of ancillary restraints applicable to the proposed transaction that are limited to a period of [...].

6.30 The Authority considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

Relevant International Obligations

6.31 Before making a determination on this matter, the Authority, in accordance with Section 22(8) of the Act, considered whether any relevant international obligations of the State existed and concluded that there were none.

7. SECTION SEVEN: THE DETERMINATION

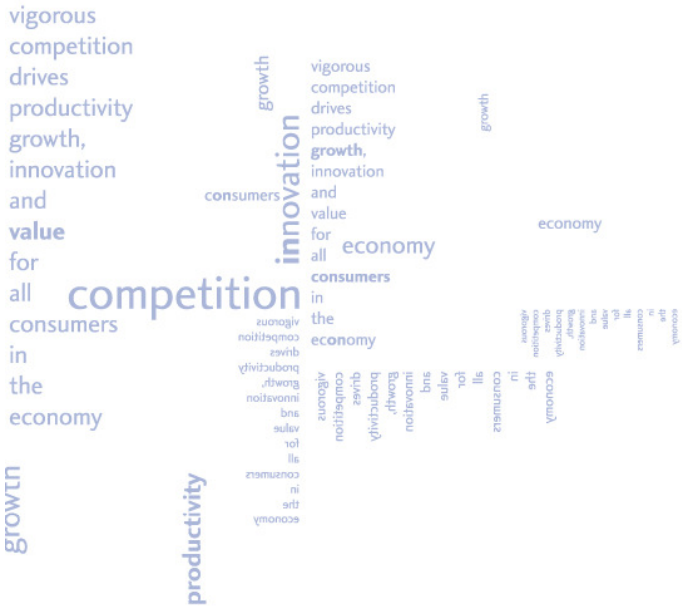
The Competition Authority, in accordance with Section 22(3)(a) of the Competition Act, 2002 has formed the view that the result of the proposed acquisition whereby Uniphar plc would acquire Cahill May Roberts Limited will not be to substantially lessen competition in markets for goods or services in the State and, accordingly, the Authority hereby determines that the acquisition may be put into effect.

For the Competition Authority

Patrick Kenny

Acting Chairperson

Competition Authority



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