



# DETERMINATION OF MERGER NOTIFICATION M/15/021 - LLOYDS PHARMACY/WALSH'S AND FRIARY ALLCARE PHARMACIES

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## Section 21 of the Competition Act 2002

**Proposed acquisition by Lloydspharmacy Ireland Limited of sole control of SOPI Ballincollig Limited, SOPI The Lough Limited, SOPI Youghal Limited, and SOPI Thurles Limited**

**Dated 21 May 2015**

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### Introduction

1. On 30 April 2015, in accordance with section 18(1) of the Competition Act 2002, as amended<sup>1</sup> ("the Act"), the Competition and Consumer Protection Commission (the "Commission") received a notification of a proposed transaction whereby Lloydspharmacy Ireland Limited ("Lloyds") would acquire the entire issued share capital and thus sole control of SOPI Ballincollig Limited, SOPI The Lough Limited, SOPI Youghal Limited, and SOPI Thurles Limited (together, the "Target Companies").

### The Undertakings Involved

#### *Lloyds*

2. Lloyds, an Irish company incorporated in the State, is owned by Celesio Aktiengesellschaft ("Celesio"), an international pharmaceutical wholesaler and retailer and provider of logistics and services to the pharmaceutical and healthcare sectors. Celesio, which is headquartered in Germany, is part of the McKesson Corporation whose registered office is in the United States. McKesson Corporation is the ultimate holding company of McKesson Group which is active in pharmaceutical wholesaling, medical supplies and healthcare information technology.
3. McKesson Group operates three divisions in the State:
  - McKesson Ireland is involved in the printing of manuals, the manufacture of software products, and the supply and installation of medical imaging systems;
  - Northstar Ireland contracts with manufacturing companies for the manufacture of generic pharmaceutical products on behalf of Northstar Ireland; and,

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<sup>1</sup> It should be noted that the Competition and Consumer Protection Act 2014 made a number of important amendments to the merger review regime set out in the Competition Act 2002.



- McKesson Medical Surgical International contracts with manufacturing companies for the manufacture of medical surgical products on behalf of McKesson Medical Surgical International.
4. Lloyds owns and operates 83 retail pharmacies in the State which sell prescription medicines, non-prescription medicines (i.e., over-the-counter medicines) and non-medicinal products such as cosmetics, toiletries, baby products, vitamins and a wide range of sundry products. Each Lloyds retail pharmacy outlet also provides a range of services including, but not limited to, photographic film developing, skin analysis and treatments, and health testing services (e.g., blood pressure check, BMI check, emergency contraception service, food intolerance testing, weight management, etc). The majority of these services are available in every Lloyds retail pharmacy outlet with some services available only in selected outlets.
  5. For the financial year ending 31 December 2014, the McKesson Corporation's worldwide turnover was approximately €138 billion, of which €[...] was generated within the State. For the financial year ending 31 December 2014, Lloyds' worldwide turnover was approximately €[...], all of which was generated within the State.

#### ***The Target Companies***

6. The Target Companies comprise four retail pharmacies active in the State which supply a full range of prescription medicines, non-prescription medicines and non-medicinal products and services:
  - SOPI Ballincollig Limited trades as Walsh's Allcare Pharmacy and is located in Ballincollig, Co. Cork.
  - SOPI The Lough Limited trades as Walsh's Allcare Pharmacy and is located in Togher, Co. Cork.
  - SOPI Youghal Limited trades as Walsh's Allcare Pharmacy and is located in Youghal, Co. Cork.
  - SOPI Thurles Limited trades as Friary Allcare Pharmacy and is located in Thurles, Co. Tipperary.
7. The entire issued share capital of each of the four Target Companies is owned by Walchem Limited which in turn is owned by Andrew Sharkey.
8. For the financial year ending 31 July 2014, the Target Companies' combined worldwide turnover was €[...], all of which was generated in the State.

#### **Rationale for the Proposed Transaction**

9. The parties state in the notification:

“The commercial objective of the Buyer is to expand its network of retail pharmacy businesses in the State. The Seller's objective is to realise the value of its investment and in so doing to dispose of the



businesses to a reputable organisation which has proven expertise in the development of a chain of quality community pharmacies in Ireland.”

### Third Party Submissions

10. No submission was received.

### Competitive Analysis

11. There is no vertical relationship between the McKesson Corporation (or any of its subsidiaries, including Lloyds) and the Target Companies in the island of Ireland. There is, however, a horizontal overlap between Lloyds and the Target Companies with respect to the operation of retail pharmacies in the State since the proposed transaction involves the acquisition by Lloyds of three retail pharmacies located in Co. Cork and one retail pharmacy in Co. Tipperary.

12. The Commission does not need to come to a definitive view on the precise relevant product market since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant product market is narrow (e.g., the supply of prescription medicines in retail pharmacies) or broader to encompass the supply of prescription medicines, non-prescription medicines and non-medicinal products and services in retail pharmacies. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market since its conclusion on the competitive impact of the proposed transaction will be unaffected whether the precise relevant geographic market is local, regional, or national. However, in order to determine whether the proposed transaction might result in a substantial lessening of competition, the Commission analysed its impact by reference to the narrowest possible relevant markets (being the market for the supply of prescription medicines in retail pharmacies in the areas in which the Target Companies’ pharmacies are located). The results of the analysis are set out in paragraphs 13 to 16 below.

#### Ballincollig

13. Lloyds does not own or operate a retail pharmacy in Ballincollig. The nearest Lloyds retail pharmacy to Ballincollig is located in Hollyhill Shopping Centre in Cork City, a distance of approximately 10.2km. In addition to Walsh’s Allcare Pharmacy, there are currently eight retail pharmacies active in Ballincollig.

#### Togher

14. Lloyds does not own or operate a retail pharmacy in Togher. The nearest Lloyds retail pharmacy to Togher is located in Cork City centre, a distance of approximately 2.2km. In addition to Walsh’s Allcare Pharmacy, there are currently ten retail pharmacies active in Togher.

#### Youghal

15. Lloyds does not own or operate a retail pharmacy in Youghal. The nearest Lloyds retail pharmacy to Youghal is located in Midleton in Co. Cork, a distance of approximately 25km. In addition to Walsh’s Allcare Pharmacy, there are currently four retail pharmacies active in Youghal.



#### Thurles

16. Lloyds does not own or operate a retail pharmacy in Thurles. The nearest Lloyds retail pharmacy to Thurles is located in Clonmel in Co. Tipperary, a distance of approximately 43km. In addition to Friary Allcare Pharmacy, there are currently eight retail pharmacies active in Thurles.
17. In light of the above, the Commission considers that the proposed transaction will not substantially lessen competition in any market for goods or services in the State.

#### **Ancillary Restraints**

18. The Agreement between the parties in respect of the sale and purchase of the Target Companies contains a number of restrictive obligations on Walchem Limited (i.e., the vendor). These include non-compete and non-solicitation clauses. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.<sup>2</sup> The Commission considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

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<sup>2</sup> In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



### **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby Lloydspharmacy Ireland Limited would acquire sole control of SOPI Ballincollig Limited, SOPI The Lough Limited, SOPI Youghal Limited, and SOPI Thurles Limited will not be to substantially lessen competition in any market for goods or services in the State, and accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Gerald FitzGerald  
Member  
Competition and Consumer Protection Commission