



DETERMINATION OF MERGER NOTIFICATION M/18/024 - LLOYDS PHARMACY/MCSWEENEY GROUP

Section 21 of the Competition Act 2002

Proposed acquisition by Lloyds Pharmacy Ireland Limited of the business assets of four retail pharmacies - Kenmare Pharmacy Limited, McSweeney Dispensers 1 Limited, McSweeney Dispensers 7 Limited and McSweeney Dispensers 14 Limited

Dated 28 March 2018

Introduction

1. On 7 March 2018, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby Lloyds Pharmacy Ireland Limited (“Lloyds”) would acquire the business assets of four retail and prescription pharmacies, namely Kenmare Pharmacy Limited, McSweeney Dispensers 1 Limited, McSweeney Dispensers 7 Limited, and McSweeney Dispensers 14 Limited (the “Target Pharmacies”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction involves the acquisition by Lloyds of the business assets including goodwill, fixed and moveable assets, the properties, IP rights and stock of the Target Pharmacies pursuant to a Business Purchase Agreement (the “Agreement”) dated 23 February 2018. The Agreement is between Lloyds Pharmacy and Kenmare Pharmacy Limited, McSweeney Dispensers 1 Limited, McSweeney Dispensers 7 Limited and McSweeney Dispensers 14 Limited (together the “Vendors”).

The Undertakings Involved

Lloyds

3. Lloyds, an Irish company incorporated in the State, is owned by McKesson Europe AG (“McKesson Europe”), a Stuttgart-registered German stock corporation. McKesson Europe is an international wholesale and retail provider of logistics services to the pharmaceutical and healthcare sectors and operates in 14 countries worldwide. The majority indirect shareholder of McKesson Europe is the McKesson Corporation, a stock corporation registered in San Francisco and listed on the New York Stock Exchange. McKesson Corporation is the ultimate holding company of McKesson Group, which is involved in the wholesale supply of pharmaceutical medical supplies and healthcare information technology.



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 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 with some services available only in selected pharmacies.
5. McKesson Corporation is also the ultimate parent company of United Drug (Wholesale) Limited (“United Drug”),¹ the largest pharmaceutical wholesaler in the State. United Drug provides wholesale supply of pharmaceutical and consumer health products to retail and hospital pharmacies.
6. United Drug also provides pre-wholesale services, providing contact distribution and other services to pharmaceutical, consumer health and animal health manufacturers in the State. United Drug is also involved in supplying and distributing other products to retail pharmacies, e.g., fragrances and over-the-counter medicines, as well as providing sales, training and marketing services to its suppliers. It also manages outsourced business activities on behalf of healthcare manufacturers, such as storage, order processing, distribution and other commercial support services.
7. The McKesson group of companies 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 enters into contract negotiations with manufacturing companies pursuant to which these companies manufacture generic pharmaceutical products under licence; and,
 - McKesson Medical Surgical International enters into contract negotiations with manufacturing companies pursuant to which these companies manufacture medical surgical products on behalf of McKesson Medical Surgical International.
8. For the financial year ending 31 March 2017, the McKesson group of companies worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

The McSweeney Group of Companies

9. The Target Pharmacies are part of the McSweeney Group of companies (the “McSweeney Group”)² which currently owns and operates six retail pharmacies in the

¹ McKesson Corporation acquired United Drug in 2016 from UDG Public Healthcare plc. Please see the European Commission’s merger decision in Case M.7818 McKesson/UDG Healthcare (Pharmaceutical Wholesale and Associated Business) which can be accessed at http://ec.europa.eu/competition/mergers/cases/decisions/m7818_331_3.pdf

² The parties informed the Commission that several companies within the McSweeney Group were placed into examinership in 2011.



State.³ The McSweeney Group is indirectly owned and solely controlled by Mr. Gerardus Hof.

10. The Target Pharmacies comprise the following four retail pharmacies:
 - McSweeney Dispensers 1 Limited, which operates as *Tohers*, and is located at 23/24 O'Connell Street, Sligo, Co. Sligo;
 - McSweeney Dispensers 7 Limited, which operates as *Collooney Pharmacy*, and is located on Main Street, Collooney, Co. Sligo;
 - Kenmare Pharmacy Limited, which operates as *McSweeney Pharmacy Kenmare*, and is located at Units 6-7 Kenmare Shopping Centre, Railway Road, Kenmare, Co. Kerry; and
 - McSweeney Dispensers 14 Limited, which operates as *Charlotte Quay Pharmacy*, and is located at Charlotte Quay in Limerick City.
11. The Target Pharmacies supply prescription medicines, non-prescription medicines, non-medicinal products and other ancillary services provided in pharmacies.
12. For the financial year ending 31 December 2015, the Target Pharmacies' worldwide turnover was approximately €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

13. The parties state in the notification:

“[...]”

Third Party Submissions

14. No submission was received.

Competitive Analysis

Horizontal Overlap

15. There is a horizontal overlap between the parties' business activities in the State since both Lloyds and the Target Pharmacies are active in the operation of retail pharmacies in the State.
16. 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 and non-prescription medicines in retail pharmacies) or broader - the operation of retail pharmacies in the State - which comprises the supply

³ Another three retail pharmacies within the McSweeney Group have recently ceased trading.



of prescription medicines, non-prescription medicines and non-medicinal products and services in retail pharmacies.

17. 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 market (being the potential market for the supply of prescription and non-prescription medicines in retail pharmacies in each of the geographic areas in which the Target Pharmacies are located).
18. For completeness, the Commission has also analysed the impact of the Proposed Transaction on a national basis.

Local Market Analysis

Toher's Pharmacy, 23/24 O'Connell Street, Sligo town

19. McSweeney Dispensers 1 Limited currently operates a pharmacy in Sligo town which trades as *Toher's Pharmacy*. Lloyds does not currently own or operate a pharmacy within Sligo town. The nearest Lloyds pharmacy to the *Toher's* pharmacy is *Lloyds Pharmacy Claremorris* located at the Square, Claremorris, Co. Mayo, a distance of approximately 79km.⁴ Thus, on the basis of a geographic market comprising the local area around the *Toher's* pharmacy in Sligo town, there is no horizontal overlap between the parties.

Collooney Pharmacy, Main Street, Collooney town, County Sligo

20. McSweeney Dispensers 7 Limited currently operates a pharmacy in Collooney town which trades as *Collooney Pharmacy*.⁵ Lloyds does not currently own or operate a pharmacy within Collooney town. The nearest Lloyds pharmacy to the *Collooney* pharmacy is *Lloyds Pharmacy Claremorris* located at the Square, Claremorris, Co. Mayo, a distance of approximately 68km.⁶ Thus, on the basis of a geographic market comprising the local area around *Collooney* pharmacy in County Sligo, there is no horizontal overlap between the parties.

McSweeney Pharmacy, Units 6-7 Kenmare Shopping Centre, Railway Road, Kenmare, Co. Kerry

21. Kenmare Pharmacy Limited currently operates a pharmacy in Kenmare which trades as *McSweeney Pharmacy Kenmare*. Lloyds does not currently own or operate a pharmacy in Kenmare town, Co. Kerry. The nearest Lloyds pharmacy to the *McSweeney Pharmacy*

⁴ In addition, the Commission notes that there will remain at least twelve other pharmacies located within a 2km radius of the *Toher's* pharmacy in Sligo town, which will act as a competitive constraint on Lloyds following implementation of the Proposed Transaction.

⁵ The *Collooney* pharmacy located in Collooney town is approximately 11 km from the McSweeney Group pharmacy located in Sligo town.

⁶ In addition, the Commission notes that the closest pharmacies to the *Collooney* pharmacy in Collooney town, Co. Sligo are located a distance of approximately 3.5km and 8.8km, respectively, which will act as a competitive constraint on Lloyds following implementation of the Proposed Transaction.



Kenmare is located in Listowel, a distance of approximately 70km.⁷ Thus, on the basis of a geographic market comprising the local area around *McSweeney Pharmacy Kenmare* pharmacy in Co. Sligo, there is no horizontal overlap between the parties.

Charlotte Quay Pharmacy, Charlotte Quay, Limerick City

22. McSweeney Dispensers 7 Limited currently operates a pharmacy in Limerick city which trades as *Charlotte Quay Pharmacy*. Lloyds currently operate 4 pharmacies within a 2km radius of *Charlotte Quay Pharmacy* located at Charlotte Quay. Thus, on the basis of a geographic market comprising a catchment area of within a radius of 2km from *Charlotte Quay Pharmacy* in Limerick city, there is a horizontal overlap between the parties. Following completion of the Proposed Transaction, there will remain at least 9 fascia of retail pharmacies active within a radius of 2km from *Charlotte Quay Pharmacy* which will continue to exert a competitive constraint on Lloyds. Therefore, the Commission considers that the Proposed Transaction will not substantially lessen competition in the supply of prescription and non-prescription medicines in retail pharmacies in the potential local market comprising a catchment area of within a radius of 2km from *Charlotte Quay Pharmacy* in Limerick city.

Table 1: Analysis of the pharmacies which are located within a radius of 2km of the Charlotte Quay Pharmacy.

Brand	Pharmacy location	Distance from Charlotte Quay Pharmacy
<i>Charlotte Quay Pharmacy</i>	Charlotte Quay	-
<i>Haven Pharmacy</i>	Windmill Court, Lower Gerald Griffin Street	0.55km
	33 Davis Street	1.0km
<i>Boots Pharmacy</i>	4-5 William Street	0.6km
<i>Prescription Center</i>	14 William Street	0.6km
<i>Lloyds Pharmacy</i>	53 William Street	0.65km
	Grove Island Shopping Centre, Corbally	0.7km
	1-3 Rices Corner, Thomondgate	1.0km
	Parkway Shopping Centre	1.9km
<i>O'Sullivan's Pharmacy</i>	19/20 Sarsfield Street	0.65km
	Unit 1 Corbally Centre, Corbally Road	0.75km
<i>Hogan's Pharmacy</i>	46 Upper William Street	0.7km
<i>Michael Hanley Chemist</i>	20 Shannon Street	0.8km
<i>Roberts Pharmacy</i>	105 O'Connell Street	0.85km
<i>Scanlon's Express</i>	Mount Kenneth	1.2km
<i>Late Night Pharmacy</i>	Apartments, Dock Road	
<i>Thomond pharmacy</i>	76 Sexton Street North	1.4km

Source: The Commission based on Commission information and information provided by the parties.

⁷ In addition, the Commission notes that there are two other pharmacies located within a 2km radius of the *McSweeney Pharmacy Kenmare* in Kenmare, Co. Kerry, which will act as a competitive constraint on Lloyds following implementation of the Proposed Transaction.



Conclusion on Local Market Analysis

23. For the reasons set out above, the Commission considers that the Proposed Transaction will not substantially lessen competition in the supply of prescription and non-prescription medicines in retail pharmacies in any of the local catchment areas in which the Target Pharmacies are located in the State.

National Basis

24. On a national level, the Proposed Transaction raises no competition concerns in the potential market for supply of prescription and non-prescription medicines in retail pharmacies. Information provided by the parties estimated that Lloyds held an estimated [0-5]% of the total number of retail pharmacies in the State in 2017 and that the Target pharmacies held an estimated [0-5]%.⁸ Thus, on a national level, the increase in Lloyds' share of the total number of retail pharmacies in the State as a result of the Proposed Transaction will be minimal.

Vertical Relationship

25. There is a vertical relationship between United Drug and the Target Pharmacies in the State. As previously mentioned in paragraph 5, United Drug is the largest pharmaceutical wholesaler in the State. United Drug is currently the Target Pharmacies' primary pharmaceutical wholesaler in the State. The parties informed the Commission that United Drug will continue to supply the Target Pharmacies with wholesale pharmaceutical products following implementation of the Proposed Transaction. In addition, the parties informed the Commission that United Drug will continue to supply wholesale pharmaceutical services to other pharmacies in the local catchment areas in which the Target Pharmacies are located, to the extent any such supply arrangements exist.
26. Therefore, the Proposed Transaction will result in United Drug and the Target Pharmacies internalising their existing supply arrangements. Furthermore, the Commission considers that the Proposed Transaction will not result in customer foreclosure as the Proposed Transaction involves only four pharmacies in the State. For these reasons, the Commission considers that the Proposed Transaction will not result in any vertical foreclosure concerns.

Conclusion

27. 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

28. The Agreement between Lloyds and the Vendors contains a number of restrictive obligations on the Vendors. These include non-compete and non-solicitation clauses. None of these restrictive obligations exceed the maximum duration acceptable to the

⁸ Please see eHealth Ireland's website for an estimation of the total number of pharmacies in the State which can be accessed at: <http://data.ehealthireland.ie/dataset/list-of-pharmacies-in-ireland/resource/72dddc8c-6107-4cfc-8eab-635759c71232>.



Commission.⁹ The Commission considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

⁹ 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 Lloyds Pharmacy Ireland Limited would acquire the business assets of four retail and prescription pharmacies, namely Kenmare Pharmacy Limited, McSweeney Dispensers 1 Limited, McSweeney Dispensers 7 Limited, and McSweeney Dispensers 14 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

Patrick Kenny
Member
Competition and Consumer Protection Commission