



## DETERMINATION OF MERGER NOTIFICATION M/15/027 - UNIPHAR/ALLCARE

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### Section 21 of the Competition Act 2002

### Proposed acquisition by Uniphar plc of sole control of Allcare Management Services Limited

Dated 10 July 2015

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#### Introduction

1. On 16 June 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 Uniphar plc (“Uniphar”) would acquire the entire issued share capital and thus sole control of Allcare Management Services Limited (“Allcare”).

#### The Undertakings Involved

##### *Uniphar*

2. Uniphar, headquartered in Dublin, has two main business divisions: Uniphar Wholesale and Allphar Services Limited (“Allphar”), a wholly-owned subsidiary of Uniphar.
3. Uniphar Wholesale is a full-line wholesaler of pharmaceutical, healthcare, and veterinary products to pharmacies, hospitals and veterinary surgeons in the State. Uniphar Wholesale purchases a wide range of products from manufacturers and re-sells them to community pharmacies and hospitals. 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.
4. 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, medicines;
  - The wholesale supply of front-of-counter and non-pharmacy-only products. This includes health and beauty products and human pharmaceutical drugs such as paracetamol, the sale of which is not confined to pharmacies; 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.



- The wholesale supply of veterinary drugs.
5. Allphar is a pre-wholesaler of pharmaceutical products, healthcare products, veterinary products and healthcare equipment and acts for that purpose as a sole agent and distributor in the State on behalf of manufacturers. 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, pharmacies and hospitals. Allphar is also involved to a limited extent in the direct supply of pharmaceutical products to pharmacies on behalf of manufacturers.
  6. For the financial year ending 31 December 2013, Uniphar's worldwide turnover was €860 million, all of which was generated in the State.

### **Allcare**

7. Allcare provides a suite of professional management services to community pharmacists in the State. These services include:
  - clinical support through Allcare's Chief Superintendent Pharmacist;
  - development of new services and product ranges;
  - procurement of goods and services from pharmaceutical wholesalers, where possible leveraging the buying power of the pharmacies supported by Allcare and, on occasion, negotiating directly with manufacturers;
  - category and planning management;
  - property management;
  - human resource management;
  - information technology management and development;
  - operational and financial controls; and
  - marketing assistance.
8. Allcare was set up through funding provided by Uniphar in 2010. The initial intention was that Allcare would provide services to pharmacies in which Uniphar had a financial interest. Over time, Allcare has developed significant expertise in the area of pharmacy management. Consequently, Allcare now provides its services to both Uniphar-associated pharmacies and independent pharmacies. Allcare provides its services pursuant to a franchise agreement (the "Allcare Franchise Agreement") entered into between the relevant pharmacy (or pharmacy group) and Allcare. The Allcare Franchise Agreement sets out the services provided by Allcare, the rights of the pharmacy/pharmacies to use the proprietary Allcare pharmacy operating system, the rights of the pharmacy/pharmacies to use the Allcare brand and also the obligations of the pharmacy/pharmacies. Allcare currently provides services to 71 pharmacies in the



State, of which [...] are Uniphar-associated pharmacies and [...] are independent pharmacies.

9. Uniphar is currently a [...] % shareholder in Allcare. The remaining issued share capital of Allcare is currently owned by Tony McEntee ([...] %), Andy Sharkey ([...] %), Alan McLean ([...] %), and Jalan Settlement ([...] %), an Isle of Man-based discretionary trust. The parties informed the Commission that no shareholder or group of shareholders currently controls Allcare. Post-transaction, Uniphar will acquire the remaining [...] % of shares from the other shareholders and will thus acquire sole control of Allcare.
10. For the financial year ending 31 December 2014, Allcare's worldwide turnover was €3.6 million, all of which was generated in the State.

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

11. The parties state in the notification:

“The retail pharmacy sector has faced various challenges in recent years due to, in particular, significant cuts by the Health Service Executive/HSE in various pharmaceutical reimbursement schemes. With the support of Uniphar, Allcare intends to extend and strengthen the services it currently provides to the community pharmacy sector in order to provide a more attractive offering. Uniphar, as a large supplier to the independent community pharmacy sector, wishes to assist community pharmacies to survive and prosper in this new harsh reality.”

#### **Third Party Submissions**

12. No submission was received.

#### **Competitive Analysis**

13. There is no horizontal overlap between Uniphar and Allcare in the State. The business activities of both parties, however, can be seen as complementary since pharmacies in the State may purchase products from Uniphar and services from Allcare. The Commission has therefore assessed whether any adverse conglomerate effects might arise as a result of the proposed transaction.
14. Paragraph 5.20 of the Commission's *“Guidelines for Merger Analysis”*<sup>2</sup> states the following:

“Conglomerate mergers are not likely to lead to competition concerns unless at least one of the merging parties has market power in one or more of the markets prior to the merger. Possible competition concerns include: (a) Portfolio effects, i.e., where a merger that may not increase concentration in any one market creates a merged entity with a strong position in several

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<sup>2</sup> See [http://www.ccpc.ie/sites/default/files/CCPC%20Merger%20Guidelines\\_1.pdf](http://www.ccpc.ie/sites/default/files/CCPC%20Merger%20Guidelines_1.pdf)



markets. (b) Tying or bundling of products, i.e., where the merged entity is able to tie the purchase of one product to the purchase of one or more other products.”

15. The Commission considers that the proposed transaction will not lead to adverse conglomerate effects resulting in harm to consumers.
16. There are two full-line pharmaceutical wholesalers currently active in the State: Uniphar and United Drug. According to information provided in the notification, Uniphar has a [40-45]% share of the Irish pharmaceutical wholesale sector with United Drug having a [45-50]% share of the sector.<sup>3</sup> The Commission considers that Uniphar, post-transaction, will not have the ability to foreclose United Drug by making pharmacies who purchase Allcare’s services purchase all or most of their pharmaceutical requirements from Uniphar. This is because Allcare has no market power in the provision of professional management services in the State as it provides its services to a small proportion of the total number of pharmacies currently active in the State ([0-5]% according to the parties in the notification).
17. The Commission also considers that Uniphar will not have the ability to foreclose third party suppliers of professional management services similar to those provided by Allcare by, for example, only acting as a full-line wholesaler of pharmaceutical products to a pharmacy if the relevant pharmacy also uses Allcare’s services. Given the number of pharmacies in the State who currently do not purchase Allcare’s services (around [95-100]% of the total number of pharmacies currently active in the State, many of whom self-supply the services provided by Allcare) Uniphar would risk losing far more sales to United Drug than it would gain due to the increase in Allcare’s customer base. Furthermore, the turnover generated by Uniphar from its full-line wholesaling business far exceeds the turnover generated by Allcare. Uniphar would therefore have little incentive post-transaction to tie its pharmacy customers to purchasing Allcare’s services as this would risk losing sales to United Drug.
18. 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.

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<sup>3</sup> The notification states that short-line wholesalers hold the remaining 9% share of the Irish pharmaceutical wholesale sector.



### **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 Uniphar plc would acquire the entire issued share capital and thus sole control of Allcare Management Services 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**