



The Competition Authority
An tÚdarás Iomaíochta

Merger Determination M/04/020

The proposed acquisition of Ammodo Limited by Uniphar plc.

DATE: 15 JULY 2004

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SECTION ONE:

INTRODUCTION

THE NOTIFICATION

- 1.1 On 8 April 2004 the Competition Authority ("the Authority"), in accordance with Section 18(1) of the Competition Act, 2002 ("the Act") was notified, on a mandatory basis, of a proposal whereby Uniphar plc, the parent company of the Uniphar Group, would acquire Ammodo Limited, the holding company and parent of the Whelehan Group. The notified transaction is hereinafter described as "the proposed acquisition".
- 1.2 On 4 May 2004, the Authority determined, in accordance with Section 21(2) of the Act, to carry out a full investigation of the proposed acquisition, pursuant to Section 22 of the Act.

INTERPRETATION

- 1.3 In this determination, unless otherwise stated, certain terms are to be interpreted as follows:
 - "The O'Toole Report" means the report of Dr Francis O'Toole, Economist, Trinity College, Dublin University, prepared on behalf of the parties;
 - "Manufacturer" means a manufacturer of pharmaceutical products;
 - "Wholesaler" means a licensed distributor of pharmaceutical products to pharmacies in the State;
 - "Pharmacy" means a licensed retail premises, operating in the State, from which pharmacy-only products and other retail products are sold to consumers;
 - "The parties" means the parties to the proposed acquisition, the Uniphar Group and the Whelehan Group; and
 - "Pre-wholesaler" means an agent acting on behalf of a manufacturer, for the storage and distribution of the manufacturer's products to other wholesalers and to hospitals.

THE PARTIES

The Uniphar Group - the acquirer

- 1.4 Uniphar plc. ("Uniphar") is the parent company of the Uniphar Group, and is also one of the Uniphar Group's main business divisions. The Uniphar Group was formed in 1994 following the merger of two co-operative societies of Irish pharmacists. Today, the Uniphar Group is still owned by Irish pharmacists - both pharmacy owners and employees pharmacists. There are about 1200 active retail pharmacists in the State, and approximately 300 of those active retail pharmacists own about []% of Uniphar's total issued shares. In this sense, the Uniphar Group has strong vertical links to the Irish retail pharmacy sector, though Uniphar submits that those shareholders tend to operate relatively small pharmacies, i.e.

their combined share of the total pharmacy sector would be significantly less than []%.¹

1.5 The Uniphar Group has three main business divisions, all of which operate in sectors of the Irish pharmaceutical and healthcare industry. The divisions are:

- i. Uniphar² is a wholesaler of human pharmaceutical products to pharmacies throughout the State. Uniphar operates storage and distribution depots in Dublin, Cork, Sligo and Limerick.
- ii. Allphar Services Limited (“Allphar”) is a pre-wholesaler of human pharmaceutical products, acting as sole agent and distributor in the State for international manufacturers. Allphar’s core function is to warehouse and distribute pharmaceutical and healthcare products on behalf of its client companies. It also provides additional services including marketing and administrative support. Allphar mainly supplies wholesalers and hospitals, though it occasionally deals directly with Health Boards, general medical practitioners, and other healthcare professionals.
- iii. Surgicare Limited (“Surgicare”) is a distributor of healthcare products to hospitals, specifically diagnostic equipment, electro-cardiograph machines, nebulisers, general examination equipment, and electric powered surgical instruments for a wide range of surgical procedures.

1.6 Uniphar also operates an investment and management company – the Independent Pharmacy Ownership Scheme (“IPOS”). IPOS was established in 2001 to provide financial assistance to young, or employee, pharmacists who wish to purchase their own pharmacies. To protect its investment, Uniphar acquires a shareholding and some additional rights in any IPOS pharmacy, which are normally re-acquired by the pharmacist on repayment of the financial assistance. IPOS offers a 12-year loan option where it invests 10.5% of the purchase price for 42% of the initial equity, and a 15-year loan option where it invests 11% of the purchase price for 44% of the initial equity.³

1.7 Uniphar states that one of the purposes of IPOS is to increase the number of independently owned and operated pharmacies in the State, as there has been a broad trend in recent years towards the development of retail pharmacy chains. IPOS is seen as strategically important for a non-vertically integrated wholesaler such as Uniphar⁴, operating in an industry of finite geographic size. IPOS limits or prevents the steady acquisition of independent pharmacies by vertically integrated wholesale competitors, such as Cahill May Roberts (“CMR”) (when this does occur, existing or potential customers of Uniphar can be permanently foreclosed), and also limits or prevents the development of pharmacy chains. Market inquiries indicate that CMR’s share of the wholesale industry has declined in recent

¹ Some of these pharmacists would also hold shares in United Drug. Uniphar understands that Irish pharmacists hold approximately 30% of the shares in United Drug.

² www.uniphar.ie - official Uniphar website, with links to web pages for all of Uniphar’s divisions.

³ www.uniphar.ie/cm_doc.asp?DocID=15

⁴ Uniphar is owned by pharmacists, but it does not own or control pharmacies, in the way that CMR does.

years due in part to CMR's increasing unpopularity associated with the growing number of pharmacy retail outlets coming under its ownership.

- 1.8 At present 85 pharmacies are linked to IPOS, representing about 7% of the total pharmacies in the State. However, Uniphar submits that, in terms of sales, most IPOS pharmacies are relatively small, so their total share of the relevant market would be significantly less than 7%. No evidence has been provided to support this assertion.
- 1.9 Uniphar estimates that [0-20%] of its total sales are made to IPOS-linked pharmacies. Uniphar also states that IPOS-linked pharmacies are not obliged, contractually or otherwise, to use Uniphar as their principal wholesale supplier (although generally they do so).

The Whelehan Group – the target

- 1.10 Ammodo Limited is the holding company and parent of the Whelehan Group, which in turn is comprised of three main subsidiary companies, all of which operate in sectors of the Irish pharmaceutical and healthcare industry. The subsidiaries are:
- i. T.P. Whelehan Son & Co. Limited ("T.P. Whelehan") is an agent for the marketing and distribution of products for a wide range of surgical procedures, health & beauty products (toiletries and cosmetics), and agricultural and garden care products.
 - ii. Perrans Distribution Limited ("Perrans") is an agent and pre-wholesaler for the marketing and distribution of a wide range of alternative or complimentary healthcare products, such as herbal remedies and vitamin/mineral supplements.
 - iii. Boileau & Boyd Limited ("Boileau & Boyd") is a wholesaler of human pharmaceutical products to Irish pharmacies, and a wholesaler of veterinary pharmaceutical products to Irish pharmacies and veterinary surgeons. Boileau & Boyd has one depot, located in Dublin.

THE PROPOSED ACQUISITION

- 1.11 The proposed acquisition would occur by Uniphar, the holding company of the Uniphar Group, purchasing the entire issued share capital of Ammodo Ltd, the holding company of the Whelehan Group. The Uniphar Group would thus acquire the entire Whelehan Group, which includes T.P. Whelehan, Perrans and Boileau & Boyd.

Commercial Rationale

1.12 [Confidential]

1.13 [Confidential]

Lines of Business

1.14 Businesses of the parties to the proposed acquisition operate in the following sectors:

- i. **Surgical products** - Although both Surgicare and T.P. Whelehan supply broad ranges of surgical and general medical products to healthcare providers, there is generally little or no substitutability between the particular products supplied by each. Further, where the parties both supply products that are used in the same field of surgery, the large price differentials and different precise functions of the parties' products are such that they are not substitutable.

Market enquiries indicate that the major suppliers of surgical equipment and general medical products in the State are Fannin Healthcare Limited, PEI, and Intraveno (a division of United Drug). Suppliers generally act under agency agreements with international manufacturers, for the provision of storage, marketing, sales and distribution services. However international manufacturers of surgical products, including Johnson & Johnson, Braun Medical, and Baxter Medical, also make sales in the State. Surgicare and T.P. Whelehan are comparatively small operators in this sector (Surgicare's turnover was €[] in 2002 and €[] in 2003). Market enquiries confirmed that the merged entity would not have market power over the market for any particular surgical product.

- ii. **Wholesale supply of veterinary products** - Of the parties to the proposed acquisition, only Boileau & Boyd supplies veterinary pharmaceutical products. The Uniphar Group has no presence in this sector, therefore its acquisition of Boileau & Boyd's veterinary wholesale business constitutes a bare transfer of market share, and there would be no change in concentration, post-acquisition, in any market as may be defined. Market enquiries and information received from the parties indicate that portfolio effects would not arise, post-acquisition, i.e. the Uniphar Group could not use its enlarged product portfolio to foreclose competitors. Further to this, Boileau & Boyd estimates that it holds about [10-20]% of the national veterinary wholesale industry. There are four other main veterinary wholesalers operating in the State. Further, Boileau & Boyd's deliveries of veterinary pharmaceutical products are currently done on a next day basis, using third party delivery companies, as there is not the same degree of urgency as with human medicines. Boileau & Boyd submits that this delivery service could improve, post-acquisition, as Boileau & Boyd would be connected into Uniphar's established national delivery network.

- iii. **Pre-wholesale distribution of human pharmaceutical products** - Medicines sold in Irish pharmacies are produced by a large number of manufacturers. Rather than operate their own distribution operation in Ireland, many manufacturers contract this function out to an Irish agent, who provides a full range of services, including storage, marketing, invoicing and delivery. The agent holds a large inventory and distributes it to other wholesalers and to hospitals. This business is known as "pre-wholesaling". Pre-wholesalers supply all brands in their respective portfolios to all wholesalers, who in turn supply all pharmacies.



The common response of industry participants was that manufacturers' prices are set by the State, and are the same for all wholesalers, irrespective of any other business relationships. Where a wholesaler also provides pre-wholesaling services, or a business linked to a wholesaler provides such services, then the manufacturer pays a separate fee for those services (although such separate fees can take the form of an agreed percentage discount on the wholesale price of products). The Uniphar Group states that its Uniphar and Allphar divisions operate at arms' length, and other industry participants indicated the same.

There is minimal overlap in this sector, on the grounds that Uniphar Group's estimate of its share of the sector (through Allphar) is [10-30%], whereas the Whelehan Group has a very minor share of less than [0-10%]. These share figures are confirmed by the Authority's own investigations. Also, the Whelehan Group's pre-wholesale business does not include any prescription medicines and includes only a small amount of over-the-counter products. In addition, the Authority agrees with the O'Toole Report where it submits that "pre-wholesalers may only restrict supplies to other wholesalers for reason of non-payment, i.e. market foreclosure incentive issues cannot arise ... as the pre-wholesalers are simply acting as agents for the manufacturers."

- iv. **Wholesale supply of human pharmaceutical products** - This is the sector where there appeared to be most potential for competition to be substantially affected by the proposed acquisition.

SCOPE OF INVESTIGATION

- 1.15 As part of its investigation into the proposed merger, the Authority contacted over 30 pharmacies, the Irish Pharmaceutical Union, and a number of pharmaceutical wholesale competitors, pharmaceutical manufacturers and purchasers of surgical products. The Authority also conducted site visits to a Dublin pharmacy and the parties' Dublin depots. It also employed an expert economist to provide a statistical analysis of collected data.⁵

SECTION TWO: MARKET DESCRIPTION AND ANALYSIS

PHARMACEUTICAL WHOLESALING

Introduction

- 2.1 In any industry, wholesalers connect manufacturers to retailers. Pharmaceutical wholesalers obtain products from manufacturers (or their pre-wholesale agents), store those products in anticipation of customer

⁵ The Authority retained Dr Vincent Hogan, Economics Department, University College Dublin.

(pharmacy) demand, and then sell and deliver the desired quantities. Wholesalers supply four main categories of product:

1. Pharmacy-only medicines, for which a doctor's prescription is required ("prescription medicines");
2. Pharmacy-only "over-the-counter" ("OTC") medicines;
3. Unrestricted OTC medicines (can be sold in any type of retail outlet); and
4. Non-medicinal products, often referred to as cosmetics, toiletries and sundries ("CTS").

2.2 The Authority's investigation in 2002 of the proposed acquisition by GEHE Ireland Ltd of the Unicare Pharmacy Chain ("the GEHE Report") focused its analysis on pharmacy-only medicines (categories 1 & 2 above), as competition for such products is confined to pharmacies, whereas unrestricted OTC medicines and CTS (categories 3 & 4 above) are sold by pharmacies *and* in numerous other classes of retail store. Pharmacy-only medicines thus distinguish a pharmacy from all other retail outlets. The GEHE Report also concluded that pharmacy-only prescription and OTC medicines make up 75% of total pharmacy sales in the State (see table 2 below).

Table 2: Composition of Pharmacy sales

| Product | 2001 Pharmacy Sales | % Total Sales |
|-----------------------------|---------------------|---------------|
| Prescription medicines | €702m | 60% |
| Pharmacy-only OTC medicines | €179m | 15% |
| Unrestricted OTC medicines | €18m | 2% |
| CTS | €253m | 23% |
| Total | €1152m | 100% |

Source: GEHE Report, 2002.

- 2.3 To compete effectively in its local market, a pharmacy must meet the service demands of its customers as quickly as possible. Therefore, a pharmacy must be able to supply a wide range of pharmacy-only medicines as quickly as possible. This makes the fast, efficient distribution of medicines, from wholesaler to retailer, a critical feature of the pharmacy sector. The ease with which consumers can obtain medicines from a pharmacy is dependent on the ability of wholesalers to deliver those medicines. To provide this level of service, wholesalers must operate fast, efficient ordering, loading and transportation systems. Market enquiries confirmed that the quality of delivery service is a crucial factor in determining the choice of wholesaler by a pharmacy.
- 2.4 "Full-line" wholesalers stock a comprehensive range of pharmacy-only and retail products (in excess of 10,000 product lines), which they can supply at short notice to retail pharmacies. The parties submit, and market enquiries confirm, that twice-daily delivery is considered the industry standard, and is the level of service expected by most pharmacies.
- 2.5 "Short-line" wholesalers also supply pharmacies, but it would appear that the service they provide can be clearly distinguished from that provided by full-line wholesalers, as the former generally concentrate on supplying a

far less comprehensive product range, and make deliveries only once or twice per week. Short-line wholesalers mostly supply fast moving products, at greater discounts than those offered by full-line wholesalers.

- 2.6 Given the demands of pharmacies with regard to product range and delivery time, the particular services provided by full-line wholesalers would appear to be distinct - centralised warehousing, electronic ordering, and delivery networks - offering pharmacies a fast, efficient means of obtaining prescription medicines. Pharmacies can also avoid carrying large inventories, dealing with numerous vendors and negotiating numerous transactions.
- 2.7 Boileau & Boyd only operates as a "full-line" wholesaler in the Greater Dublin Area, as it cannot provide the standard twice-daily delivery service elsewhere. However, it does operate as a "short-line" wholesaler⁶ in the rest of the State, supplying packages of products to pharmacies on a less frequent basis.
- 2.8 Market enquiries have also confirmed that while pharmacies may obtain certain supplies of medicines directly from short-line wholesalers, or direct from manufacturers, in practice they tend to rely almost exclusively on full-line wholesalers for their supplies. The parties estimate that 95% of the Irish retail pharmacies industry is served by full-line wholesalers.⁷
- 2.9 The vast majority of pharmacies send their orders to full-line wholesalers electronically, via a modem connection. Pharmacies and wholesalers use several different types of IT ordering systems, but the software of each wholesaler interfaces with that of each pharmacy, and the entire ordering system operates on a common protocol, as a standard recognised code is assigned to each product by the Irish Pharmaceutical Union ("IPU"). When a pharmacy places an order, the full-line 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 instantly. The pharmacist can then send that part of his order, via the same system, to his second-choice full-line wholesaler (or to his third or fourth choice wholesaler).
- 2.10 The electronic ordering system allows any pharmacy to instantly order from any wholesaler, at no additional cost to the pharmacy. The objective is to ensure an efficient and effective response to customers. Each 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 ordering system is independent of wholesalers, who cannot access information relating to orders placed by pharmacists with competing wholesalers. Market enquiries found that pharmacies order the vast majority of their prescription only medicines and over-the-counter products over the electronic ordering system. For cosmetics, toiletries and sundries (CTS), however, the vast majority are ordered direct from manufacturers through the latter's representatives.

⁶ With only one depot in the State, Boileau & Boyd can only provide full-line delivery services in the Greater Dublin Area. For the rest of the State, Boileau & Boyd can only offer weekly/twice weekly delivery services. However, the fact that it can offer a full range of products distinguishes it from pure short-line wholesalers.

⁷ The UK Monopolies & Mergers Commission, following a detailed investigation of the UK pharmaceutical industry in 1996, concluded that approximately three-quarters of UK pharmacies were supplied by wholesalers.

Relevant Product Market

- 2.11 Having regard to the GEHE Report, all pharmacy products fall into two broad categories: (1) pharmacy-only medicines and (2) retail products.⁸
- 2.12 The wholesale sector is the focus of this determination. Full-line wholesalers compete amongst themselves for the business of delivering prescription and OTC medicines on a very frequent (twice-daily) basis. For the business of delivering OTC medicines and CTS products, on a less frequent basis, they also compete with short-line wholesalers.
- 2.13 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 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.
- 2.14 In response to full-line wholesalers exercising increased market power, chains of pharmacies could commence wholesaling. The parties informed the Authority that a number of large pharmacy groups have pharmaceutical wholesale licences and have the ability, if necessary, to commence wholesaling by means of purchasing groups. The parties estimate that approximately 180 wholesale licences are currently in existence. However, given the importance each pharmacy attaches to a quick and efficient delivery service, it is questionable how viable an alternative this would be to the service offered by the existing wholesalers.
- 2.15 The relevant product market, for the purpose of analysing the proposed acquisition, is the distribution service provided by full-line pharmaceutical wholesalers, for the supply of human pharmaceutical medicines. This is broadly similar to the product market definition applied by the Authority in the GEHE Report:

" The relevant product market is the distribution service provided to retail pharmacies by pharmaceutical wholesalers. Quality of service is defined chiefly by the number of product lines stocked by a wholesaler and the frequency and responsiveness of delivery. Full-line wholesalers have a comprehensive range of currently available pharmaceutical products and are able to supply them at short notice to retail pharmacies. They can be distinguished from short-line wholesalers, who generally concentrate on a limited product range. Full-line wholesalers generally make twice-daily deliveries nationwide to retail pharmacies whereas short-line wholesalers may only deliver once or twice a week."

⁸ Par 4.34, GEHE Report

- 2.16 This market definition is also similar to that adopted by the US Courts in the Cardinal Health decision⁹, where the relevant product market was defined as the wholesale distribution of prescription drugs - other methods of supply were excluded, for reasons similar to those outlined above.

Relevant Geographic Market

- 2.17 Uniphar, CMR and United Drug operate storage and distribution depots located throughout the State and use distribution networks of transit drivers, who meet trucks from the depots at set locations a number of times a day. This allows them to supply their pharmacy customers nationally on a twice-daily basis. The Uniphar Group's four depots are strategically located to provide customers with a short lead-time from order to delivery and a frequent, reliable delivery service.¹⁰ Boileau & Boyd provides a similar service, but only within the Greater Dublin Area. Outside of this region, Boileau & Boyd operates with considerably less frequency of delivery.

- 2.18 The relevant geographic market, for the full-line wholesale sector, may be national, as the three largest full-line wholesalers operate nationally, using strategically located depots. The Authority notes the geographic market definition applied in the GEHE Report:

"The relevant geographic market is national. The retail pharmacy market in Northern Ireland is not supplied by wholesalers in the State, as they operate under a different regulatory system and have a different set of codes for pharmaceutical products. Similarly, wholesalers in Northern Ireland do not supply retail pharmacy outlets in the State. Though not all full-line wholesalers in the State operate on a fully nationwide basis, the three largest do. Each of these wholesalers has three depots, spread around the country."¹¹

- 2.19 However, Boileau & Boyd's full-line wholesaling activities are confined to the Greater Dublin Area, and because short-line wholesalers only compete with full-line wholesalers to a limited extent, Boileau & Boyd's activities elsewhere may not be relevant.

- 2.20 The actual size of this "Greater Dublin Area" is not certain, but would generally include the surrounding counties. Market enquiries indicate that a full-line wholesale depot can service a geographic region defined as 2/2.5 hour drive (round-trip) from the depot. Time, rather than distance, appears to be the delineating factor, as one distribution route may cover a short distance in a high density, high traffic area, whereas another route may cover a far longer distance in a low density, rural area, with a spectrum of routes in between. The former UK Monopolies & Mergers Commission, in its 1996 investigation of the proposed UniChem PLC/Lloyds Chemists plc and GEHE AG/Lloyds Chemists plc mergers, found that UK "pharmacies were located on average about one hour's driving time (one way) from the full-line wholesaler's warehouse; while the pharmacy located furthest away from the warehouse was on average nearly 2½ hours' driving time away ... A full understanding of the coverage of individual warehouses cannot, however, be gained from these figures as

⁹ Federal Trade Commission v. Cardinal Health, Inc., et al - 12 F. Supp. 2d 34, 65 (DDC 1998) www.ftc.gov/os/1998/07/98cvo595.htm

¹⁰ http://www.Uniphar.ie/cm_doc.asp?DocID=24

¹¹ GEHE Report, Par. 4.36.

differences in the road network, traffic density, local topography, the frequency of the delivery service and population density, for example, must also be taken into account.”¹²

- 2.21 The O’Toole Report states: “*Dublin-based wholesale warehouses would hardly be able to profitably impose a small but significant and non-transitory increase in price without attracting significant “imports” from wholesale warehouses based outside Dublin*”. However, wholesalers compete on quality of service as well as price, particularly the ability to deliver twice daily. For this reason, and as stated by the parties, the larger wholesalers operate depots located strategically throughout the State. If frequency and responsiveness of deliveries are the determining qualities of an effective competitor, then depots based outside Dublin could not compete effectively or vigorously in the Dublin area, as they could not deliver their goods in time. Thus it appears that Uniphar, United Drug and CMR compete in Dublin through their Dublin-based depots, but not by utilising their depots based outside of Dublin. On the other hand, it may be appropriate to define the market in terms of the geographic range of the main incumbents, rather than the location of specific depots.
- 2.22 In a later response, Dr. O’Toole argued that, although it would be surprising if it were shown that Dublin-based pharmacies were ever supplied, in anything other than exceptional circumstances, by depots based outside Dublin, this does not imply that Dublin constitutes a separate geographic market. If this pattern of trade, in itself, constituted proof of the existence of a separate geographic market in Dublin, Dr. O’Toole argues that almost certainly there would also be separate geographic markets in/around Cork and Sligo/Ballina. Dr. O’Toole claims that in order to establish a separate Dublin-based geographic market, it would be necessary to argue that there would be no repositioning of depots towards Dublin by any wholesaler, including both new and existing wholesalers, after a hypothetical small but significant and non-transitory increase in price by all Dublin-based depots. According to Dr. O’Toole, this is highly implausible given the size of the Dublin “market” and the relative ease by which the incumbent wholesalers could establish a temporary (or even permanent) depot in close proximity to Dublin, e.g. Kildare.
- 2.23 The view of the Authority is that the relevant geographic market is regional in nature, given the constraints on frequency of delivery on the demand side. Entry by new or existing wholesalers would not be of sufficient scale or automation to exercise competitive pressure. This view is not inconsistent with a wider national market in which wholesalers operate. In any event, the competitive effects are likely to be the same whether the geographic market is defined as the State or the Greater Dublin Area.

Market Structure

- 2.24 The wholesale sector has become increasingly concentrated over time, through consolidation, and is now highly concentrated, with the four largest firms together holding 99% sector share. This is consistent with general trends in other countries, particularly the United States and the UK.

¹² http://www.competition-commission.org.uk/rep_pub/reports/1996/387unichem.htm#full

2.25 The Authority's market share estimates are set out in the table below:

Table 3: Shares of wholesaling of pharmaceuticals in the State

| Wholesaler | Current Share | Post-acquisition |
|----------------|---------------|------------------|
| CMR | [20-25]% | [20-25]% |
| Uniphar | [25-30]% | [30-35]% |
| United Drug | [40-45]% | [40-45]% |
| Boileau & Boyd | [4-7]% | - |
| Others | [4-7]% | [4-7]% |

Each figure represents the firm's estimate of its own market share as taken from the IMS Health database.¹³ A firm can only access its own market share figures from this database.

2.26 Applying the above figures, it would appear that the pre-acquisition HHI is 3,000 and the post-acquisition HHI would be 3,257. However, any attempt to measure accurately the market concentration, post-acquisition, is affected by the fact that pharmacies that currently use both Uniphar and Boileau & Boyd as full-line wholesalers will have to use either United Drug or CMR as their second source of supply. That is, due to the importance of reliability, each pharmacy uses at least two full-line wholesalers and so pharmacies that use both parties cannot move to using Uniphar alone.

2.27 Estimates for the Greater Dublin Area indicate that Boileau & Boyd's share rises slightly to around []%. Thus the corresponding post-acquisition shares and HHIs do not differ significantly for the Greater Dublin Area.

Rivalry

2.28 A patient can only obtain a prescription medicine in the State with a valid prescription from a licensed medical practitioner. Thus it is the medical practitioner, rather than the patient or pharmacist, who decides which particular prescription medicine to demand from a pharmacy. Pharmacists must dispense according to the prescription and can only influence demand for the product in three ways. First, where a prescription is generically written, the pharmacist has discretion within that class of generic product. Second, the pharmacist can refuse to dispense a prescribed medicine, if, for example, he believes that the medicine could react negatively with other medication the patient is taking. Third, the pharmacist may telephone the medical practitioner and suggest an alternative prescription, e.g. a cheaper generic drug.

2.29 Prescription medicines are therefore not subject to the normal forces of demand and supply at the patient level or at the pharmacy level.¹⁴ This in turn implies that wholesalers cannot influence the demand for their products/service, *within* pharmacies, where those products require a doctor's prescription.

2.30 Furthermore, the retail prices of prescription (and some OTC) medicines are not determined by the pharmacist. The GEHE Report noted that 78% of sales of pharmacy-only medicines are recouped from the State, through a variety of State-administered schemes,¹⁵ making the State by far the

¹³ The IMS Health database is a global source of pharmaceutical market intelligence.

¹⁴ For this reason, manufacturers promote their products to medical practitioners rather than to patients.

¹⁵ Under the General Medical Services ("GMS") scheme, the State reimburses pharmacies that provide medicines to individuals with medical cards. The Long Term Illness scheme is a similar arrangement

largest single buyer of such products from Irish pharmacies. For this reason, the wholesale price (to pharmacies) of all *prescription* medicines in the State is fixed by the Dept of Health and Children, in negotiation with the IPHA, which represents manufacturers. The wholesaler's margin on the trade price (and thus the manufacturer's price) is capped at 15% by the State. Accordingly, the prices of prescription medicines are the same for all wholesalers. The parties submit that a similar pricing structure is applied by manufacturers to non-prescription OTC products, because: many OTC medicines were originally prescription medicines and subject to price regulation; pharmacies requested one discount level across all products purchased; and manufacturers prefer to offer discounts on OTC products directly to the pharmacy through promotions.

- 2.31 As prices are fixed, wholesale price competition would initially appear to be non-existent. However, substantial discounts are offered by wholesalers to pharmacies, and this is equivalent to price competition. In effect, the 15% margin, minus the discount, represents the wholesaler's real price for the service offered. The parties submitted that the net 15% wholesale margin has declined over the past 15 years.
- 2.32 Customer enquiries found that pharmacies perceive wholesale discount levels to be very high (though they have been static in recent years) and virtually the same across all wholesalers. However, data provided by industry participants indicated wide variation in the discounts offered to pharmacies, both across pharmacy types and across wholesalers.
- 2.33 The parties submitted that the primary determinant of the discount level is the level of sales. Factors such as whether the pharmacy was part of a group (chain), method of payment, were also considered. This was confirmed by market enquiries and econometric work carried out by the respective experts retained by the Authority and the parties.
- 2.34 Customer enquiries also found that pharmacies generally require a significant change in the discount (i.e., at least 1%) to consider switching and, even then, they are likely to use the offer as a bargaining tool with their current first-line wholesaler to negotiate an equivalent change in the discount out of that wholesaler. Many pharmacies emphasised the importance of loyalty to a wholesaler; by switching wholesalers regularly, pharmacies risk damaging relations that may affect the quality of the delivery service received from the wholesaler.¹⁶

for patients with certain chronic illnesses. A patient registered under the Drugs Payment scheme pays a maximum of €78 per month for approved medicines.

¹⁶ Most pharmacies do some level of business with all four pharmaceutical wholesalers.

- 2.35 Pharmacies purchase most of their medicines from a preferred (primary) full-line wholesaler, but when necessary they will purchase from a second, or even third or fourth choice, wholesaler. It appears that most pharmacies use a primary, “first-line” wholesaler because proven quality of service (i.e. reliability) is important, and because, in broad terms, the more one purchases, the higher the discount received. The GEHE Report contained estimates that pharmacies received about 95% of their pharmaceutical products from their first-line wholesaler, and only 4 or 5% from their second-line wholesaler. However, market enquiries indicate that while most pharmacies receive twice-daily deliveries from their primary full-line wholesaler, many also receive twice-daily deliveries from their secondary full-line wholesaler. As mentioned earlier, market enquiries also indicate that pharmacies do not regularly switch wholesaler.
- 2.36 Another area where full-line wholesalers compete is in the lead-time between placing an order in the morning and delivery (i.e. the second delivery of the day). As discounts offered by wholesalers are very high and have been relatively static in recent years, wholesalers have increasingly focused attention on improving the quality of their delivery service as a means of competing for customers. The more efficiently a wholesaler can process an order, the more time it can allow its customers before they must place their electronic order. As such, each wholesaler arranges the products in its warehouse according to how frequently they are ordered by pharmacies. Competition between wholesalers has led the three largest wholesalers to invest in “automation” of their depots, to varying degrees. Staff of the Authority, on site visits to Uniphar’s automated depot, and Boileau & Boyd’s non-automated depot, observed the workings of an automated system. Automation involves a conveyor belt system with plastic boxes (“totes”) circulating around the warehouse, and placing the top-moving products (which are also adaptable to such a system) in a special chute that dispenses the product directly on to the conveyor belt. Uniphar states that it has about [] products in its automated chute (of a total of approximately 10,000 products stocked). Those [] products account for approximately []% of its volume throughput.
- 2.37 Although wholesalers have focused on discount levels and the quality of the delivery service as a means of competing for customers, the vast majority of switching by pharmacies between wholesalers occurs when ownership changes. As a consequence, wholesalers have begun to focus on the soft financing of pharmacies as a means of creating links to the downstream retail sector (e.g., the IPOS scheme run by Uniphar). By providing financial assistance to pharmacists wishing to purchase their own pharmacies, a wholesaler significantly increases the likelihood of that particular pharmacy using it as its primary wholesaler.¹⁷ It is also the case that the part financing of independent pharmacies by wholesalers prevents the acquisition of these pharmacies by vertically integrated wholesale competitors. In this manner, wholesalers prevent their potential customer base from declining. Boileau & Boyd does not partake in the soft-financing of pharmacies.

¹⁷ While IPOS-linked pharmacies are not obliged to purchase from Uniphar, in practice all, or nearly all, of them appear to do so.

- 2.38 Finally, markets with a high degree of rivalry amongst suppliers will tend to exhibit shifting market shares over an extended period of time. When the level of competition is very intense, some firms will gain market share at the expense of others. Market share estimates over the period 1994 to 2003, contained in the O'Toole Report, indicate that both UniPhar and United Drug have continued to gain market share at the expense of CMR. These figures suggest a market with a certain degree of rivalry, although the acquisition of APD in 1994 by UniPhar and the exit of Dublin Drug sometime after 1998 indicate a growing consolidation within the market.

Entry

- 2.39 New entry must be *timely, likely, and sufficient* in scope to deter or counteract any competitive effects of concern.
- 2.40 *Timeliness of Entry* – With regard to a potential wholesale entrant's ability to obtain the necessary resources, it has been submitted that automated depots and efficient distribution networks are essential to compete vigorously and effectively. Authority staff observed the workings of an automated system on site visits. Automation involves choosing one's top moving products, which are adaptable to an automated system, and balancing the economies of scale of those products. Uniphar has about [] products in its automated system, from a total of 10,000 products stocked. Those [] products account for approximately []% of its volume throughput.
- 2.41 Uniphar states that it first automated in 1995. UniPhar, in addition to automating its Dublin depot, also recently opened depots in Sligo and Cork. Uniphar submits that no real cost savings are achieved by automation, but it does deliver greater accuracy and reduces the time period between receipt of order and delivery, which are both critical factors in terms of competing in the relevant market.
- 2.42 CMR has automated to some degree each of its wholesale warehouses, including its Dublin depot in 2003. United Drug has automated all of its depots to varying extents.
- 2.43 Boileau & Boyd submits that its primary barrier to expansion is the capital required to automate its depot. Boileau & Boyd contends that its depot is one third of the size of operation required to justify the minimum level of automation. Boileau & Boyd is not prevented from automating due to the outlay costs, but rather it lacks the necessary critical mass of customers to justify the expense of automating its depot.
- 2.44 The GEHE Report concluded that regulatory barriers are low, and appear to be reasonable and necessary. A wholesaler must hold a licence issued by the Irish Medicines Board ("IMB"), costing €1,079 p.a., plus €444 for each additional premises, and requiring the holder to have suitable premises, equipment, staff, record keeping, handling, storage and distribution. Licensed wholesalers are not required to employ a pharmacist, but their premises are regularly inspected by the IMB. The parties state that about 180 wholesale licences are available in the State.
- 2.45 *Likelihood of Entry* - The history of entry and expansion in the relevant market does not suggest that entry in the future is at all likely. Indeed the history of the past two decades has been one of consolidation. Further,

while it was noted above that a well-financed entrant *could* enter the relevant market, it appears that it might not be profitable to do so. Market enquiries indicate that the reputation of incumbents and goodwill mean that pharmacy retail outlets do not switch wholesaler regularly. Thus, a new entrant would find it difficult to secure sufficient business in reasonable time to justify its initial outlay. This constitutes a barrier to entry.

- 2.46 The trend towards soft financing of pharmacy purchases by pharmaceutical wholesalers implies that any new entrant would also have to provide soft financing in order to enter the market. This represents an additional barrier to entry.

Econometric Analysis

- 2.47 In order to detect any evidence that would suggest an adverse impact on the market of the proposed acquisition, the Authority engaged Dr Vincent Hogan as expert economist to undertake an econometric analysis of the wholesale pharmaceutical market in the State. The basic strategy of the analysis was to examine whether wholesalers, in general, and/or Uniphar specifically, behave differently in geographic markets not served in a full-line manner by Boileau & Boyd. Put differently, would the elimination of Boileau & Boyd have a negative effect on competition in the Greater Dublin Area market, or in the State?
- 2.48 Our expert analysed data provided by several industry participants. Using sales and discount data on individual pharmacies, for each wholesaler, our expert calculated the percentage discount given to each pharmacy. (In a sense, the percentage discount offered to the pharmacy is representative of the wholesaler's "price" for its delivery service.) For each wholesaler, the distribution of the percentage discounts showed considerable variation across customers. This is to be expected given the range of customers each wholesaler serves. For example, common sense suggests that wholesalers will provide higher percentage discounts to larger customers. However, the *extent* of the dispersion (the standard deviation), and the *average* percentage discount (the mean), differed significantly across wholesalers. That is, each wholesaler had a very different pattern of percentage discounts offered. One wholesaler had an average percentage discount of []%, with a standard deviation across customers of []%, whilst another wholesaler had an average percentage discount of []%, with a standard deviation across customers of []%.
- 2.49 For each wholesaler, our expert analysed the influence of a number of factors on the percentage discounts offered to a pharmacy, including: the level of sales per annum to the pharmacy,¹⁸ the location of the depot from which the pharmacy is served, and whether the pharmacy is part of a group/chain (a "group pharmacy") or independent.¹⁹ Our expert also included variables to take account of possible interactions - for example, to measure the joint effect of being a pharmacy that is both a member of a group/chain and served by the Dublin depot, and a variable to measure the effect of sales on the discount rate when the pharmacy is serviced by the Dublin depot. It is also possible that wholesalers may compete on

¹⁸ Variables representing a polynomial in the annual sales were also included in order to take account of non-linearities in the relationship between sales and the discount.

¹⁹ Dummy variables were used to reflect the location of the depot from which the pharmacy is served, and whether it is part of a chain.

quality of service (in addition to or instead of discount) - where quality is primarily described by credit terms and the number of deliveries received. Thus, our expert also analysed the influence of the above factors on both credit terms and the number of deliveries received.

2.50 Our expert found:

- No evidence that discount levels are higher where Boileau & Boyd is active (i.e. in the area served by the Dublin depot);
- No evidence that credit terms are better where Boileau & Boyd is active; and
- No evidence that the number of deliveries is higher where Boileau & Boyd is active.

2.51 Indeed, there was only one indication of a local market effect found in the entire econometric analysis: for one wholesaler, group pharmacies served by certain depots get higher discounts than group pharmacies served by other depots. The highest such effect is present in the Dublin depot but the difference between Dublin and the other depots is not statistically significant. The analysis suggests that the econometric evidence for any local market effects arising from the proposed acquisition is weak.

2.52 A similar analysis was carried out by the parties. The parties' expert used the average discount, rather than the percentage discount, and a similar set of variables were used in the regression analysis. Although the parties' analysis differed in its specification from the Authority's, the results broadly supported the findings of the Authority's expert.

Market Enquiries

2.53 In order to get a broader understanding of the Irish pharmaceutical wholesaling market, the Authority contacted over thirty pharmacies, including large chains. The following are the broad observations from the Authority's enquiries with customers:

- Pharmacies do not regularly switch either first-line or second-line wholesaler. Many pharmacies emphasised the importance of loyalty to a wholesaler; by switching wholesalers regularly, pharmacies risk damaging relations which may affect the quality of the delivery service received from the wholesaler;
- With respect to discount levels, most pharmacies, including groups, stated that discounts are (a) dependent on volume, (b) very high, (c) virtually the same across all pharmaceutical wholesalers, and (d) have been static in recent years. Some stated that they would require a significant change in the discount (i.e., at least 1%) to consider switching and, even then, they would use the offer as a bargaining tool with their current first-line wholesaler to negotiate an equivalent change in the discount out of that wholesaler;
- All pharmacies stated that the quality of the delivery service is very important;
- When asked why they use Boileau & Boyd either as a primary or secondary wholesaler, most pharmacies mentioned one or all of the



following factors: (a) the fact that the pharmacy has been using Boileau & Boyd for a long period of time and has a good relationship with its representative, (b) it requires veterinary products and Boileau & Boyd is the only human pharmaceutical wholesaler that also provides veterinary products, (c) Boileau & Boyd offers a good service combining competitive discount levels with a reliable delivery service. All pharmacies that the Authority contacted and which use B&B as either a primary or secondary wholesaler were fully independent;

- Some pharmacies expressed the view that Boileau & Boyd is a small player in the market and has been struggling to maintain market share in recent years; and
- Pharmacies did not feel that the proposed acquisition would affect either the level of discounts or the quality of the delivery service.

SECTION THREE: COMPETITIVE EFFECTS

UNILATERAL EFFECTS

- 3.1 Boileau & Boyd has certain characteristics that differentiate it from the three large wholesalers in the market. It is not automated and it can offer only a limited weekly/twice weekly delivery service to pharmacies outside the Greater Dublin Area. In addition, Boileau & Boyd's most attractive selling point for many pharmacies is the fact that it also provides veterinary products, unlike the other human pharmaceutical wholesalers. As a consequence, Boileau & Boyd can be viewed as a marginal player, particularly outside the Greater Dublin Area where it is unable to match the delivery service offered by the three large players in the market. However, the Authority has considered whether it might be having some influence on the level of competition in the market. The econometric analysis described earlier did not reveal any tendency for discounts or the number of deliveries to be higher in the Greater Dublin Area.
- 3.2 Reliability is a key competitive instrument in the wholesaling of pharmaceuticals. All pharmacies use at least two full-line wholesalers, to ensure they have access to over 10,000 core products at twice-daily delivery frequency. Questions arise as to whether three wholesalers will compete as vigorously as four, in a market where each pharmacy requires two wholesalers at the minimum. This brings in the possibility of unilateral effects that arise where, as a result of the merger, the merged firm finds it profitable to raise price, irrespective of the reactions of its competitors or customers. It does not appear that Uniphar could raise its wholesale prices without concern, post-acquisition, for the following principal reasons:
- Discounting, which market enquiries suggest is very competitive across the State for all wholesalers, and the increasing use of schemes such as IPOS as a competitive tool to prevent the acquisition of independent pharmacies by vertically integrated wholesalers, indicate that wholesalers compete vigorously to win new customers, or to maintain existing customers. As mentioned earlier, the statistical analysis carried out by the expert economist found no evidence to indicate that discount levels or the number of deliveries are higher in the Dublin area relative to the rest of the country, suggesting that there is little or no competitive effect due to the higher number of wholesalers with depots in the Dublin area;
 - Although the relevant market is concentrated, three strong competitors would still operate therein;
 - Those three competitors would have excess capacity, and capacity could also be increased relatively speedily and economically. The O'Toole Report states that the estimated capacity utilisation rates for United Drug's Dublin, Ballina and Limerick depots are [50-90]%, [50-90]% and [50-90]%, respectively. The equivalent estimates for UniPhar's Dublin, Limerick, Sligo and Cork depots are [50-90]%, [50-90]%, [20-50]% and [20-60]%, respectively.

Finally, the equivalent estimates for CMR's Dublin, Cork and Sligo depots are [50-90]%, [50-90]% and [50-90]%;

- Each wholesaler would continue to operate depots strategically located throughout the State and stock near identical product lines, i.e. there would still be little if any product differentiation;
- While Boileau & Boyd stocks an equivalent product range to those of its competitors, generally it only delivers once per day, even in the Greater Dublin Area where it is mainly operates. Therefore, with regard to frequency of service, Boileau & Boyd is not as effective and vigorous a competitor of Uniphar as United Drug and CMR; and
- Pharmacies would incur minimal costs or other impediments in switching from Uniphar to another wholesaler. The electronic ordering system, which links all pharmacies to all wholesalers, allows for this. Also, most pharmacies are already being supplied by a secondary wholesaler, i.e. the distribution network is already in place. However, as noted above market enquiries indicate that pharmacies do not switch wholesaler regularly.

3.3 All three remaining wholesalers would have vertical links to the retail pharmacy sector. A sister company of CMR, Unicare Pharmacy Limited, owns a number of pharmacies outright - including the Unicare chain, which it acquired in 2002. Uniphar operates the IPOS scheme. United Drug, through its Catalyst support service scheme, also offers financial backing to persons or entities acquiring pharmacies. The removal of Boileau & Boyd from the market would remove the only pharmaceutical wholesaler that is completely independent of the downstream retail sector. This raises the concern that the incentives facing the three remaining wholesalers may alter as a result of this acquisition. In particular, it is possible that customers of each wholesaler that are also linked to it, either as a shareholder or via a soft financing scheme such as IPOS, may be more likely to receive preferential treatment (possibly in terms of the quality of the delivery service) over customers that are completely independent. The parties have stated, however, that independent pharmacies are a very important part of a wholesaler's customer base, and, therefore, it would not be in the interest of a wholesaler to compete less vigorously for business available from fully independent pharmacies. According to the parties, approximately, 85% of pharmacy business in the State is free from soft financing links with wholesalers.

3.4 The parties informed the Authority that the pharmacies that switched away from CMR in response to the GEHE merger in 2002 did not switch to Boileau & Boyd. This is confirmed by the fact that Boileau & Boyd's market share actually declined between 2001 and 2003.

CO-ORDINATED EFFECTS

3.5 A merger may diminish competition if it facilitates competitors engaging in coordinated behaviour to raise prices. Market enquiries revealed a concern on the part of a small number of pharmacies that the three remaining wholesalers might engage in collusive behaviour, and that the removal of Boileau & Boyd might be conducive to such collusion. However, they could not explain in what way the extinction of Boileau & Boyd might have such an effect. A (non-exhaustive) list of the factors that can cause a merger or acquisition to increase or decrease the likelihood of coordination is available in the Authority's Notice in Respect of Guidelines for Merger Analysis. They include:

1. Slight transparency about market conditions such as prices and other variables – In general, wholesalers have some information concerning the quality of the delivery service offered by competitors, and are also generally aware which wholesaler supplies which pharmacies. In addition, although wholesalers do not have exact information concerning the discount levels offered by competitors, negotiations with customers provide wholesalers with a sense of the level of discounts offered by competitors.
2. Homogeneity of the product, especially in terms of substitutability among competitors – the delivery service provided by each wholesaler to its customers is largely homogenous, given the near identical goods supplied, the interchangeable ordering system, and the distribution methods.
3. Homogeneity of firms, especially in terms of symmetry of market shares, similar costs conditions and levels of vertical integration – the three large wholesalers all supply on a nationwide basis. In terms of costs, the three big firms have each automated their Dublin depots. Market shares have changed in recent years with Uniphar and United Drug gaining market share at the expense of CMR. While symmetry of market shares and similar costs could facilitate coordinated behaviour, the considerable investment in automation in recent years, and the fluctuating market shares, are indicative of non-coordinated behaviour between competitors.
4. Presence of same firms in several markets – The three big firms are all involved in the upstream pre-wholesaling market in the State and they also have links to the downstream retail sector.
5. Quick detection and severe punishment are key factors determining the ability of firms to engage in collusive behaviour. Demand is likely to be relatively stable in this market, which makes deviation from coordination easier to detect.
6. Fora for information sharing - The Pharmaceutical Distribution federation (PDF) is an association of full-line pharmaceutical wholesalers. The federation has been in existence for a long period of time and it appears to be a vehicle for information sharing and discussion of a broad range of issues related to the pharmaceutical

wholesale industry. Boileau & Boyd has been an active and compliant participant since the inception of the PDF.

7. The Authority, having regard to Par 4.14(e) of the Guidelines for Merger Analysis, considered whether Boileau & Boyd operates as a “maverick” in the relevant market, i.e., whether it has a history of cutting price or otherwise deviating from conventional market behaviour in a pro-competitive manner. Market enquiries did not indicate that B&B offers higher discount levels or a better delivery service than the other wholesalers. Furthermore, as mentioned above, statistical analysis carried out by the expert economist found no evidence to indicate that discount levels or the number of deliveries are higher in the Dublin area relative to the rest of the country.
- 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.
 - 3.7 The acquisition of Boileau & Boyd would mean that there would be no difference between the Greater Dublin Area and the rest of the State in terms of the number of wholesalers present in each area. With respect to issues concerning transparency about market conditions, there is nothing to indicate that the absorption of Boileau & Boyd by Uniphar would increase transparency in the relevant market beyond present levels, and therefore nothing to indicate that the proposed acquisition would increase the likelihood of detection should any firm choose to deviate from any coordinated behaviour.
 - 3.8 Another factor that can affect the likelihood of collusive behaviour, post acquisition, is changing asymmetries amongst market participants, in terms of either capacity distribution and/or costs. It does not appear that the proposed acquisition will significantly alter Uniphar’s capacity or cost structure and therefore lead to a change in the distribution of capacities or costs across the remaining three firms.
 - 3.9 The current equilibrium (with four firms) appears to be one with high discounts and a high service quality (as represented by a large number of deliveries). The current situation, therefore, might appear to offer a reasonable incentive to collude (possibly through reduced discounts, fewer deliveries or both). This incentive may be offset, however, by the links that exist between the three large wholesalers and the downstream retail pharmacy sector. Wholesalers would appear to have little incentive to engage in collusive behaviour that would lead to lower discounts and/or an inferior delivery service for the pharmacies to which they are linked in the downstream market.²⁰ In a market that is partly vertically integrated, resulting price increases or profit gains in the upstream wholesale sector could be countered by equivalent or higher losses in the downstream retail sector. The proposed acquisition, however, does not appear to change these incentives, apart from the fact that it would be easier to oversee

²⁰ It is possible that any coordinated behaviour might be designed to only affect independent pharmacies that have no links to any of the three wholesalers.

coordinated behaviour involving three firms as opposed to four firms. As noted earlier, the econometric analysis showed that the three nationwide wholesalers do not act competitively differently in areas where Boileau & Boyd is not present.

- 3.10 Thus, although this particular market exhibits certain characteristics that raise concerns about the likelihood for coordinated behaviour, the acquisition of Boileau & Boyd does not significantly increase these concerns.
- 3.11 Furthermore, the behaviour of the main players in the market in recent years does not suggest a market environment where coordinated interaction is prevalent. Levels of investment and innovation have been high in recent years, as firms have automated some or most of their depots and increasingly become engaged in the soft financing of pharmacies.

SECTION FOUR: CONCLUSIONS AND DETERMINATION

CONCLUSIONS

- 4.1 Boileau & Boyd does not have any automated depots located outside the Greater Dublin area that would make it comparable to the three large wholesalers in the market. Furthermore, its Dublin depot is not automated and its most attractive selling point for many pharmacies is the fact that it also provides veterinary products, unlike the other human pharmaceutical wholesalers. As a consequence, Boileau & Boyd can be viewed as a marginal player, particularly outside the Greater Dublin area where it is unable to match the delivery service offered by the three large players in the market.
- 4.2 There is no evidence to suggest that Boileau & Boyd acts as a significant competitive constraint on the three large wholesalers. This is evidenced by
- a. Econometric analysis, which found no evidence of systematically higher discount levels or deliveries in the Greater Dublin Area which might have been expected given that four wholesalers with depots operate in this area as opposed to only three wholesalers in other areas of the State, and
 - b. Market enquiries, which found no evidence to suggest that Boileau & Boyd offers higher discounts or a superior delivery service to pharmacies.
- 4.3 There is no evidence to suggest that the proposed acquisition will provide Uniphar with the opportunity to act independently of its competitors. Currently, there is intense competition in all areas of the State amongst wholesalers for customers (both independent and group pharmacies), as evidenced by very high discounts and a high quality delivery service. Market enquiries found no suggestion that Boileau & Boyd is exerting a significant influence on the existing competitive environment or that the current situation would change after the proposed acquisition. The common perception of Boileau & Boyd is that of a small wholesaler struggling to maintain its market share.
- 4.4 The wide dispersion in the discount rate charged by industry participants to customers and the high levels of strategic investment by the main players in the market in recent years do not suggest a market environment where coordinated interaction is prevalent. Furthermore, the proposed acquisition does not alter to any significant extent the incentives facing the remaining wholesalers to engage in coordinated behaviour. There is no evidence to suggest that Boileau & Boyd is acting as a maverick firm, either in regard to the service offered to its customers or its dealings with the PDF.

DETERMINATION

The Competition Authority, in accordance with Section 22(3) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by Uniphar plc, the parent company of the Uniphar Group, of Ammodo Limited, the holding company and parent of the Whelehan Group, will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

Dr John Fingleton
Chairperson and Member of the Competition Authority