



Case M1668G

*Proposed acquisition of the assets of the Lloyds Pharmacy
business of Stephen Smith Limited
by The Channel Islands Co-operative Society Limited*

Decision

Date: 6 November 2023

Guernsey Competition and Regulatory Authority
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Summary

1. The Channel Islands Co-operative Society Limited (the **Purchaser**) proposes to acquire the assets (**Assets**) of the Lloyds Pharmacy business of Stephen Smith Limited (trading as Lloyds Pharmacy) (the **Seller**) (together the **Notifying Parties**).
2. The transaction has been notified to the Guernsey Competition and Regulatory Authority (**GCRA**) pursuant to Section 16(1) of the Competition (Guernsey) Ordinance 2012 (the **2012 Ordinance**).
3. The GCRA has determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market and hereby approves the notified transaction.

The Notified Transaction

4. On 12 October 2023, the GCRA received a joint application from the Notifying Parties for the proposed acquisition by the Purchaser of the Assets from the Seller.
5. The GCRA registered the application on its website with a deadline for comments of 26 October 2023. One submission was received.

The Parties

6. The Purchaser, the ultimate parent undertaking, is a Jersey registered company. It operates in grocery retail, road fuels retail, pharmacy products and services and funeral businesses across the Channel Islands.
7. The Seller, wholly owned by Admenta Holdings Limited, is a Guernsey registered company. The ultimate parent undertaking and controlling party of the Seller is Aurelius European Opportunities GP S.a.r.l. which is registered in Luxembourg. The Seller is trading as Lloyds Pharmacy and is active in pharmacy products and services in Guernsey with its three pharmacy businesses/assets which are the subject of the proposed transaction.

Guernsey: Requirement for GCRA Approval

8. Pursuant to s.61(3)(a) of the 2012 Ordinance, a merger or acquisition occurs for the purposes of that Ordinance when: *“an undertaking [...] directly or indirectly acquires or establishes control of the business of another undertaking”*.
9. Accordingly, the acquisition by the Purchaser of the Assets from the Seller amounts to an acquisition for the purposes of the 2012 Ordinance. The notified transaction is therefore an acquisition, as defined by the 2012 Ordinance.

10. Under Regulation 2(a) and (b) of the Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations 2012 (the **Regulations**), an undertaking is involved in a merger or acquisition if it is acquiring, or being acquired by, another undertaking.
11. On completion of the notified transaction, the Purchaser will acquire the Assets from the Seller. Both the Purchaser and the Seller are therefore involved in a merger for the purposes of the Regulations.
12. Under s.13(1) of the 2012 Ordinance, certain mergers must be notified to, and approved by the GCRA before they can be put into effect. Regulation 1 of the Regulations provides that mergers must be notified to the GCRA for clearance if:
 - a. The combined Channel Islands turnover of the undertakings involved in the merger exceeds £5 million, and
 - b. Two or more of the undertakings involved in the merger have Guernsey turnover exceeding £2 million.
13. According to information provided by the notifying parties,
 - a. The Purchaser had turnover of £[>] million in Guernsey, and
 - b. The Seller had turnover of £[>] million in Guernsey.

in the business year preceding the date of this decision. Therefore, the combined and individual applicable turnover of the Parties in the Channel Islands and Guernsey exceeds these thresholds. On this basis, the GCRA's approval is required before the acquisition is executed.

Market Definition

14. Under s.13 of the 2012 Ordinance, the GCRA must determine if the merger would substantially lessen competition within any market in Guernsey for goods or services.
15. As an initial step, the GCRA will identify the markets which are likely to be affected by the merger since market definition provides a framework within which the competitive effects of a merger can be assessed. However, the boundaries of the market do not necessarily determine the outcome of the analysis of the competitive effects of the merger. This is because there can be constraints on the merging parties from outside the relevant market, segmentation within the relevant market or other ways in which certain constraints are more significant than others. The GCRA will, where appropriate, take these factors into account in its assessment.
16. When defining a market, the GCRA may take note of its own previous decision-making practice and/or market definitions applied by other competition authorities. However, these previous decisions are not precedents and are not binding, either on the merging parties or on the GCRA. Competition

conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts¹.

Views of the Parties

Relevant product market

17. The Notifying Parties state that both the Purchaser and the Seller are active in the retail supply of pharmacy products and services in Guernsey, which should be divided into the following product markets:

1. Prescription only medicines (POM)

18. These medicines can only be obtained on prescription and are subject to price control set by the States of Guernsey. Prices for prescriptions (except private prescriptions) are set by the States of Guernsey under the Health Service (Benefit) (Guernsey) Law, 1990 with drug costs reimbursed using fixed NHS Drug Tariff pricing and dispensing fees fixed for all pharmacies in Guernsey.

2. Pharmacy services

19. Pharmacy services include various healthcare provisions such as supervised consumption for drug addiction and nursing home medicine tray supplies. These services are contracted by the States of Guernsey and are paid at fixed rates. There are also several services that are not commissioned by the States such as private flu vaccinations.

3. Other retail products

20. This category includes any remaining goods that are sold within a pharmacy. This category can be classified as follows:

a) Pharmacy-only medicines (**P-Meds**)

21. These are pharmaceutical drugs that do not require a prescription but can only be sold under pharmacist supervision.

b) General sales list medicines (**GSLs**)

22. These are medicines that can be bought from pharmacies, supermarkets and other retail outlets without a prescription or the supervision of a pharmacist.

¹ GCRA Guideline 7 – Market Definition, page 26.

Relevant geographical market

23. The Notifying Parties put forward three alternative geographic market definitions, all of which are narrower than island-wide.
24. First, they argue that it would be practical to define the relevant geographic market by parish, as each parish normally has a town/community and each parish which has a pharmacy has at least one GP surgery.
25. Second, they suggest that the relevant geographical relevant market might be defined in terms of catchment area radius by referring the Competition and Markets Authority's (CMA) Celesio/Sainsbury Decision² (**Celesio/Sainsbury Decision**) which determined the catchment areas as follows:

Table 4: Average radius of catchment areas

Area type	miles	
	Lloyds	Sainsbury's*
Conurbation	1.4	2.4
City and town	1.4	3.4
Rural	2.3	4.7
Very rural	3.6	4.7

Source: CMA calculations.

* The estimate for 'rural' areas is based on the only observation available; in the absence of observations, the estimate for 'very rural' areas is set equal to that for 'rural' areas.

26. Third, and finally, they argue that given that Guernsey is considerably smaller in size than the UK it would be prudent to consider smaller catchment area radius. In that regard, they referred to the JCRA's³ Spar/Sandpiper Decision⁴ where the JCRA determined the catchment radius for convenience stores as 1 mile.

GCRA Consideration

27. The relevant product market is defined primarily by reference to the likely response of consumers and competitors. An examination of both the likely reaction of purchasers, i.e., demand-side, and other suppliers, i.e., supply-side, is typically undertaken⁵. The geographic market is the area over which substitution takes place. Geographic markets are defined using the same process as that used to define the product market.

² CMA's report named "A report on the anticipated acquisition by Celesio AG of Sainsbury's Pharmacy Business" and dated 29 July 2016.

³ Jersey Competition Regulatory Authority.

⁴ JCRA's Spar/Sandpiper Decision dated 26 April 2017 (M1290J).

⁵ GCRA Guideline 7 – Market Definition, page 14.

Relevant product market

28. As explained above, the activities of the Notifying Parties in Guernsey overlap in the supply of retail pharmacy products and services.
29. The GCRA considers that there is limited demand side substitutability between the different categories of retail pharmacy products and services identified by the Notifying Parties. Although P-Meds are substitutable for GSLs to some extent (e.g. in smaller quantities/doses), there are many P-Meds for which a GSL substitute is not available. There is no demand side substitutability between POMs, pharmacy services and P-Meds.⁶ This indicates that the relevant product market may be narrower than the supply of retail pharmacy products and services.
30. Although the boundaries of a relevant product market are generally determined by reference to demand-side substitution alone, it may be appropriate to combine several narrower product markets into a single, broader product market. It may, in particular, be appropriate to do so where the same firms compete to supply the different products and the conditions of competition between the firms are the same for each product. The GCRA notes that the CMA adopted this approach in the Celesio/Sainsbury Decision, in which it aggregated the markets for POMs, P-Meds and pharmacy services⁷.
31. In the present case, the GCRA considers that the precise market definition can be left open since, for the reasons set out below, the acquisition would not lead to a substantial lessening of competition on any plausible basis.

Relevant geographical market

32. There are fifteen pharmacy stores in Guernsey⁸⁹ and each of the Notifying Parties currently has three stores (Pharmacies number 1, 2 and 3 in the below map belong to the Purchaser whereas number 6, 7 and 8 belong to the Seller). The location of pharmacy stores in Guernsey is presented below¹⁰:

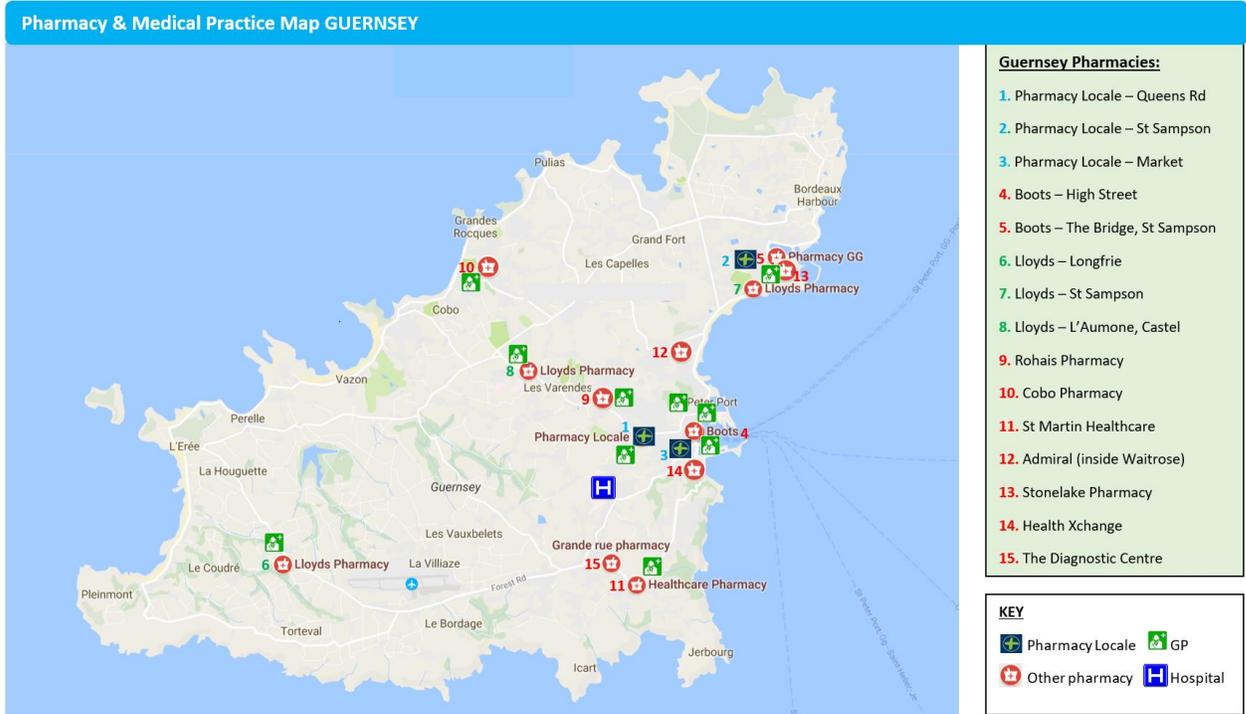
⁶ CMA's Celesio/Sainsbury Decision, paras 5.5.

⁷ CMA's Celesio/Sainsbury Decision, paras 5.6 and 5.7.

⁸ <https://www.gov.gg/pharmacies>

⁹ There is one pharmacy in Alderney which is not taken into consideration in the assessments in this decision.

¹⁰ The map is submitted by the Notifying Parties as Appendix 1 of the Merger Application Form.



33. The geographical market definition process starts by looking at a relatively narrow area, which would be the area supplied by the parties to the merger¹¹. In the present case, and in line with the approach adopted by the CMA in the Celesio/Sainsbury’s Decision, the GCRA considers that it is appropriate to base its geographic market definition on the catchment area from which each pharmacy is likely to draw most of its custom^{12,13}.

34. In the Celesio/Sainsbury Decision, the CMA determined that the relevant geographic market for each store would depend on its location; conurbation, city and town, rural or very rural¹⁴:

¹¹ GCRA Guideline 7 – Market Definition, page 20.

¹² In its Merger Assessment Guidelines, the CMA states that it may examine the geographic catchment area within which the great majority of a store’s custom is located when assessing mergers involving a large number of local geographic markets such as mergers of grocery retailers operating in multiple localities (CMA’s Merger Assessment Guidelines, para. 9.15).

¹³ The GCRA does not accept the submissions of the Notifying Parties that the geographic market should be defined on a parish-by-parish basis. This would imply that pharmacies which are close to each other but located in different parishes (e.g. Healthcare Pharmacies located in Rohais Medical Centre, Rohais, St Peter Port, GY1 1FF and Lloyds Pharmacy located in L’Aumone Surgery, Castel, GY5 7RU, which are less than 1 mile apart) would not be viewed as substitutes by consumers. It would also imply that consumers who live in a parish where there is no pharmacy (Forest, St. Andrews, Vale, Torteval and St Saviour’s) are not able to purchase pharmacy products and services. We do not consider this to be plausible.

¹⁴ CMA’s Celesio/Sainsbury’s Decision, paras 5.15. The catchment areas of the Sainsbury’s pharmacies and the Lloyds pharmacies were defined differently because Sainsbury’s pharmacies were all located within supermarkets. In Guernsey, there are only two pharmacies located in supermarkets, one of which is operated by the Purchaser. Given the small number of supermarket based pharmacies in Guernsey, the GCRA does not propose to use the Sainsbury’s catchment areas defined in the Celesio/Sainsbury’s Decision.

Table 4: Average radius of catchment areas

Area type	miles	
	Lloyds	Sainsbury's*
Conurbation	1.4	2.4
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Rural	2.3	4.7
Very rural	3.6	4.7

Source: CMA calculations.

* The estimate for 'rural' areas is based on the only observation available; in the absence of observations, the estimate for 'very rural' areas is set equal to that for 'rural' areas.

35. The GCRA agrees with the submissions made by the Notifying Parties¹⁵ that given that Guernsey is considerably smaller in size than the UK, it is appropriate for the GCRA to limit the focus of its assessment to smaller catchment areas than would be the case in a larger jurisdiction such as the UK¹⁶. The GCRA notes that in its Spar/Sandpiper decision, which was an acquisition relating to the retail supply of groceries, the JCRA adopted a cautious approach and conducted an assessment based on catchment areas with a 1 mile radius from each affected store¹⁷.
36. For the purposes of this Decision, although the GCRA considers that it is not necessary to define the geographic market precisely, it will assess the likely impact of the merger on the basis of the narrowest plausible geographic market definitions; 1.4 miles catchment radius (the smallest geographic market considered in Celesio/Sainsbury's) and a smaller 1 mile catchment radius.

Effect on Competition

37. As set out above, there is a horizontal overlap between the activities of the Notifying Parties in the area of retail supply of pharmacy products and services.

Horizontal effects

38. After defining the relevant market, GCRA estimates the respective market shares of the competitors in that market, both before and after the proposed transaction. These shares can be used as an indication of the overall level of market concentration that will be brought about as a result of the merger.
39. The Seller has three pharmacy stores in Guernsey which are the subject of the proposed merger.

Store	Address
Lloyds St Sampson	St Sampson's Medical Centre, Grandes Maisons Road, St Sampson's GY2 4JS

¹⁵ Referencing the JCRA's Spar/Sandpiper Decision dated 26 April 2017 (M1290J).

¹⁶ In that regard, the GCRA notes that the largest catchment area for Lloyds pharmacies defined by the CMA in the Celesio/Sainsbury's Decision would lead to a geographic market definition that was almost island-wide, which is not plausible.

¹⁷ CICRA's Spar/Sandpiper Decision dated 26 April 2017 (M1290J), para 23 and 24.

Lloyds Longfrie	Le Longfrie Surgery, St Pierre du Bois, GY7 9RZ
Lloyds L'Aumone	L'Aumone Surgery, Castel, GY5 7RU

40. The GCRA will conduct its horizontal effect analysis based on the locations of the Seller's above mentioned pharmacy stores.

Lloyds St Sampson

41. On the basis of catchment areas of 1.4 miles and 1 mile, there are four other pharmacy stores within the catchment of Lloyds St Sampson including one store operated by the Purchaser. Following the acquisition, the Notifying Parties will operate 40% of the pharmacy stores within those catchment areas (2 out of 5).

Lloyds Longfrie

42. On the basis of catchment areas of 1.4 miles and 1 mile, there is no other pharmacy store within the catchment area of Lloyds Longfrie. The acquisition will not increase the combined market share of the Notifying Parties in either possible geographic market around the Lloyds Longfrie pharmacy.

Lloyds L'Aumone

43. On the basis of catchment areas of 1.4 miles and 1 mile, respectively there are two and one other pharmacy stores in the catchment area of Lloyd's L'Aumone, none of which are operated by the Purchaser. The acquisition will therefore not increase the combined market share of the Notifying Parties in either possible geographic market around the Lloyds L'Aumone pharmacy.

Lloyds St Sampson

44. On the basis of the above assessment, the only area where a concentration is observed is the catchment area of the Lloyds St Sampson pharmacy.

45. The GCRA notes that although there are parameters of competition other than price (e.g. waiting times, opening hours and range of products), the existing intensity of competition between the Notifying Parties is already likely to be restricted to the extent that the products and services that they supply are price controlled by the States of Guernsey. As set out above, the prices of POMs and the price at which pharmacy services (as defined in paragraph 19 above) are fixed by the States of Guernsey. It is the GCRA's view, therefore, that although the transaction does create a market share of 40% in this potential market (which is at a level which might raise the possibility of an SLC arising) the lack of price competition in the supply of POMs and pharmacy services (which in this case together account for in excess of 30% of the turnover generated by each of the Notifying Parties) means that this transaction is unlikely to lead to a substantial lessening of competition in the supply of those products and services in the Lloyds St Sampson catchment area.

46. In respect of general sales list medicines (as defined in paragraph 21 above), the GCRA notes that these are available from retail suppliers other than pharmacies (e.g. grocery stores). These non-pharmacy suppliers may therefore be reasonably expected to exercise a constraint on the Notifying Parties in respect of the supply of GSLs following the transaction. As such, the GCRA considers it unlikely that the acquisition will lessen competition substantially for the supply of those products in the Lloyds St Sampson catchment area.
47. In respect of the likely impact on competition for the supply of P-Meds, the GCRA notes that there are two other pharmacies (Boots and Stonelakes), which are located in very close proximity to the Purchaser's pharmacy (0.2 miles) in the catchment area of Lloyds St Sampson's and which are both situated in prominent positions in the main shopping area of the Bridge at St Sampson's.
48. Given the very close proximity of these two competing pharmacies to each of the Notifying Parties' pharmacies in St Sampson's, the prominent position of each within the main shopping area of the Bridge, the fact that pharmacy location is likely to be the most important factor influencing a consumer's choice of pharmacy¹⁸ and the fact that Boots is operated by a large multinational group, the GCRA considers it likely that these pharmacies will continue to exert competitive pressure on the combined entity post-merger such that the acquisition is unlikely to give rise to a substantial lessening of competition.

Decision

49. Based on the preceding analysis, the GCRA concludes that the acquisition will not substantially lessen competition within any market in Guernsey for goods or services.
50. The GCRA is also satisfied that the merger would not be to the prejudice of:
- (a) consumers or any class or description thereof;
 - (b) the economic development and well-being of the Bailiwick; or
 - (c) the public interest.
51. The merger is therefore approved under s.13 of the 2012 Ordinance.

6 November 2023

By Order of the Board of the GCRA

¹⁸ Research conducted by the Co-op in 2013 suggests that this is the case, which is confirmed by the CMA's investigation in the Celesio/Sainsbury's merger (CMA's Celesio/Sainsbury Decision, para. 26).