

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 369

27 MARCH 2020

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

GLAXOSMITHKLINE CONSUMER HEALTHCARE HOLDINGS LIMITED

AND

THE CONSUMER HEALTHCARE BUSINESS OF PFIZER INC.

CASE NUMBER: 2019APR0004

1. On 03 April 2019, the Competition Commission ("the Commission") received notice of an intermediate merger whereby GlaxoSmithKline Consumer Healthcare Holdings Limited ("GSK CH Holdings") intends to acquire the Consumer Healthcare Business of Pfizer Inc. ("Pfizer CH"). Upon the implementation of the proposed transaction, Pfizer CH and GSK CH Holdings will form a combined CH Business which will be solely controlled by GlaxoSmithKline plc. ("GSK").
2. The primary acquiring firm is GSK CH Holdings. GSK CH Holdings is ultimately controlled by GSK.
3. GSK and its subsidiaries are collectively referred to as the GSK Group.
4. The primary target firm is Pfizer CH. Pfizer CH is division of Pfizer Laboratories PFE (Pty) Ltd ("Pfizer PFE"). Pfizer PFE is ultimately controlled by Pfizer Inc. ("Pfizer").
5. GSK is a pharmaceuticals company active worldwide in research, development, manufacturing, and marketing in three broad segments, namely prescription

pharmaceuticals (including HIV/AIDS pharmaceuticals through the existing and separate ViiV joint venture with Pfizer), vaccines and consumer healthcare products.

6. In South Africa, the GSK Group operates a consumer healthcare business, which manufactures, develops and markets consumer preferred and expert recommended brands in the oral health, pain relief, respiratory, nutrition, gastro-intestinal and skin health categories.
7. Pfizer CH is the consumer healthcare business of Pfizer. Pfizer CH is a global over-the-counter ("OTC") healthcare business which develops, manufactures and markets non-prescription medicines, vitamins and nutritional products. Globally, Pfizer CH offers products in five major areas: (a) Pain Management; (b) Gastrointestinal Health; (c) Respiratory; (d) Dietary Supplements; and (e) Personal Care products (e.g. lip care).
8. The Commission considered the activities of the merging parties and found that they overlap in respect of the production and supply of consumer healthcare products for cold and flu treatments and pain management treatment in South Africa. The Commission assessed the following markets:
 - 8.1. National market for multi-symptom cold and flu treatments (ATC 3 class R5A / OTC 3 class 01B1);
 - 8.2. National market for nasal preparations (ATC 3 class R1A, R1B/ OTC 3 01B2);
 - 8.3. National market for multi-symptom cold and flu treatments (ATC 3 class R5A / OTC 3 class 01B1) and topical nasal preparations (R1A / OTC 3 class 01B2);
 - 8.4. National market for multi-symptom cold and flu treatments (ATC3 class R5A / OTC class 01B1) and systemic nasal preparations ((ATC3 class R1B / 01B2);
 - 8.5. National market for multi-symptom cold and flu treatments (ATC 3 R5A/OTC 3 01B1) and antitussives (ATC 3 class R5D / OTC 3 class 01A1);
 - 8.6. National market for systematic non-narcotic analgesics (ATC 3 level of N2B/ OTC 3 02A2 and 02A2); and
 - 8.7. National market for topical analgesics (ATC 3 M2A/OTC 3 02E1).

Assessment of the horizontal overlaps

9. The below table reflects the combined post-merger market shares of the merging parties and the market shares accretion based on the IQVIA data.

Relevant market	Merging parties combined market shares			Market share accretion		
	2016	2017	2018	2016	2017	2018
Multisystem cold and flu treatments	9,0%	8,2%	7,6%	7.6%	6.9%	6.7%
Nasal preparations	25.8%	23.7%	21.7%	0.6%	0.7%	0.7%
Multi-symptom cold and flu and topical nasal preparations	8.7%	7.8%	7.3%	7.4%	6.6%	6.4%
Multi-symptom cold and flu treatments and systematic nasal preparations	12.6%	11.6%	10.5%	6.1%	5.6%	5.4%
Multi-symptom cold and flu treatments, and antitussives	6,0%	5.3%	5.0%	5.0%	4.5%	4.4%
Supply of non-narcotics and anti-pyretics	4.5%	4.2%	4.9%	0.4%	0.3%	0.3%
Supply of topical analgesics	26.2%	26.4%	24.7%	0.0%	4.8%	4.6%

10. The Commission found that the merging parties' combined post-merger market shares in the respective markets remains low, with the exception of the market for production and supply of nasal preparations and the supply of topical analgesics.
11. With respect to the market for production and supply of nasal preparations and the supply of topical analgesics, the market share accretion resulting from the proposed merger remain low (less than 5%) implying that the proposed transaction does not significantly alter the structure of the market. Furthermore, the Commission finds that the merged entity will continue to face competition from various players such as, Pharmicare Limited, t/a Aspen Pharmicare ("Aspen"), Adcock Ingram Healthcare (Pty) Ltd and Ascendis Pharma (Pty) Ltd . These firms will constrain the merging parties from unilaterally increasing their prices to the detriment of their customers.
12. The Commission is thus of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in these markets as the parties combined post-merger market shares remains low. Furthermore, the Commission finds that the merging parties will continue to face competition from various players..

13. In light of the above, the Commission concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the affected markets.

Public interest considerations

Effect of the proposed transaction on the manufactures of healthcare product supplied by the Pfizer

14. The Commission found that Pfizer CH uses other third-party manufactures. In respect of Pfizer CH, it is not certain whether GSK will take over the manufacturing of the locally produced products and thereby taking business from the third-party manufactures.
15. The Commission received concerns from a third-party manufacturer indicating that they are concerned that should the relationship with Pfizer CH not continue as a result of the proposed transaction, then their business will be negatively impacted in terms of loss of their business revenue and would need to retrench some of its employees from the loss of the Pfizer CH contract.
16. The Commission found that a termination of a contractual arrangements by Pfizer CH with the third-party manufacturer as a result of the proposed transaction will negatively impact on their business and lead to indirect retrenchments of employees. The third-party manufacturer is a black empowered business and a fully South African owned pharmaceutical company. To mitigate against this, the Commission is imposing a condition requiring the merging parties to continue to utilise the services of the third-party manufacturer for a specified period.

Effect of the proposed transaction on employment

With respect to employment, the merging parties submit that the proposed transaction may result in the retrenchments of 38 skilled employees.

17. The Commission is of the view that the number of employees likely to be retrenched of 38 is substantial given the number of employees employed by Pfizer CH. The merging parties

submit that the retrenchments would occur at both Pfizer CH and GSK CH. The merging parties have to some extent followed a rational process in identifying the number of employees likely to be retrenched as the merging parties have specified the positions which are likely to be affected by duplications. However, the Commission acknowledges that the retrenchments are triggered by possible duplications.

18. The Commission is imposing a condition which requires the merging parties to limit the number of retrenchments to 38 skilled employees.

Overall conclusion

19. In light of the above, the Commission concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the affected market. However, the proposed transaction is likely to negatively affect the local manufacturers of pharmaceutical product who manufactures product for Pfizer CH. Lastly, the transaction is likely to result in significant employment loss.
20. Thus, to remedy these concerns, the Commission approves the proposed transaction subject to conditions that the merging parties must continue using the third-party local manufacturer for a specified period and the merging parties will cap the number of retrenchments to 38 skilled employees. These conditions are contained in Annexure A". The parties have agreed to the proposed conditions.