



**DETERMINATION OF MERGER
NOTIFICATION**

M/24/011

LloydsPharmacy/McCabes Pharmacy

25 April 2024



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

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1. INTRODUCTION

Introduction

1.1 On 16 February 2024, in accordance with section 18(1)(a) of the Competition Act 2002 as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a merger notification form (the “Merger Notification Form”) concerning a proposed transaction whereby LloydsPharmacy Ireland Limited (“LloydsPharmacy”), indirectly owned and solely controlled by PHOENIX Pharma SE (“PHOENIX”), would acquire sole control of Drummullan Unlimited Company (“Drummullan”), Arundina Holdings Limited (“Arundina”) and Calathea Holdings Limited (“Calathea”), together trading as McCabes Pharmacy (“McCabes Pharmacy”) (the “Proposed Transaction”). PHOENIX, LloydsPharmacy and McCabes Pharmacy are collectively referred to as the “Parties” in this Determination.

The Proposed Transaction

1.2 The Proposed Transaction is to be implemented pursuant to the following three share sale and purchase agreements, each dated 20 October 2023:

- A share sale and purchase agreement between LloydsPharmacy and [REDACTED];
- A share sale and purchase agreement between LloydsPharmacy, Kalamunda Limited and [REDACTED]; and
- A share sale and purchase agreement between LloydsPharmacy and [REDACTED].

1.3 Together, these three sale and purchase agreements are referred to as “the SPAs”. Following the implementation of the Proposed Transaction, LloydsPharmacy will acquire sole control of McCabes Pharmacy.

The Undertakings Involved

The Acquirer – LloydsPharmacy

- 1.4 LloydsPharmacy currently owns 79 retail pharmacies throughout the State. In addition to its physical stores, LloydsPharmacy also sells non-prescription medicine and consumer products online.¹
- 1.5 LloydsPharmacy, an Irish company incorporated in the State, is indirectly owned and solely controlled by PHOENIX. PHOENIX is an integrated healthcare provider active across Europe and headquartered in Mannheim, Germany. PHOENIX’s core business is the pre-wholesale and wholesale distribution of pharmaceutical products across several European countries including Ireland.² PHOENIX is active in the pre-wholesale and full-line wholesale distribution³ of pharmaceutical products in the State through United Drug (Wholesale) Ltd (“United Drug”) and Pemberton Marketing International Limited (trading as United Drug (Consumer)). Through these companies, PHOENIX is active in the wholesale distribution of pharmacy only human pharmaceutical products (“POHPPs”),⁴ over-the-counter (“OTC”) products and front-of-shop (“FOS”) products to retail pharmacies in the State.
- 1.6 The Commission has previously issued three determinations involving LloydsPharmacy:
- *M/19/019 – Lloyds/Median BOFH*,⁵
 - *M/18/024 – Lloyds Pharmacy/McSweeney Group*,⁶ and
 - *M/15/021 – Lloyds Pharmacy/Walsh’s and Friary Allcare Pharmacies*.⁷

¹ See an overview of LloydsPharmacy’s online range at: <https://lloydspharmacy.ie/>.

² Pre-wholesalers provide storage, distribution and logistics services to manufacturers.

³ Full-line wholesalers are wholesalers which stock an extensive range of products, which amounts to a minimum of 10,000-12,000 distinct items or stock keeping units.

⁴ POHPPs are those products that are only available to consumers under the supervision of a pharmacist and include both POHPPs as well as certain OTC products (i.e., OTC products which can only be dispensed under the supervision of a pharmacist).

⁵ The Commission’s determination is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2019/07/M-19-019-Lloyds-Median-BOFH.pdf>.

⁶ The Commission’s determination is available at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/03/M.18.024-Lloyds-Pharmacy.McSweeney-Group_public-determination.pdf.

⁷ The Commission’s determination is available at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-15-021-Lloyds-Pharmacy-Public_0.pdf.

1.7 For the financial year ending 31 January 2023, PHOENIX’s total worldwide turnover was approximately €[REDACTED]. For the financial year ending 31 March 2023, PHOENIX’s total turnover in the State was approximately €[REDACTED].

The Target – McCabes Pharmacy

1.8 McCabes Pharmacy comprises the following privately held companies: (i) Drummullan;⁸ (ii) Arundina;⁹ and (iii) Calathea.¹⁰ McCabes Pharmacy operates 31 retail pharmacies (each a “Target Pharmacy” and collectively the “Target Pharmacies”) across the State, with a strong presence in Dublin. Table 1 lists each Target Pharmacy in the State.

Table 1: The Target Pharmacies

	Location	Town	County
1	51 Leinster Street	Athy	Kildare
2	Units 6 to 8 Citywest Shopping Centre, Citywest	Dublin	Dublin
3	Unit 5, The Crescent Shopping Centre	Dooradoyle	Limerick
4	Unit 3 Adelphi Court, The Long Walk	Dundalk	Louth
5	Unit 1, Station Road	Lusk	Dublin
6	Unit 2 Yellow Walls Road	Malahide	Dublin
7	Units 3 and 4 Malahide Shopping Centre	Malahide	Dublin
8	Unit 4, Newcastle SC, Main Street	Newcastle	Dublin
9	Unit 1, Veronica House, Skerries Corner, Lower M.S	Rush	Dublin
10	Unit 1, Airside Shopping Centre, Holywell Link Road	Swords	Dublin
11	Unit G24, Pavilions Shopping Centre,	Swords	Dublin
12	Ridgewood Shopping Centre, Forest Road	Swords	Dublin
13	Unit 4, Swords Shopping Centre, Rathbeale Rd, Commons West	Swords	Dublin
14	2 North Main Street	Wexford Street	Wexford

⁸ Drummullan is a private unlimited company registered in the State, [REDACTED].

⁹ Arundina is a private limited company, [REDACTED].

¹⁰ Calathea is a private limited company, [REDACTED].

15	Unit 8 College View	Ballymun	Dublin
16	Unit 148 Blanchardstown Shopping Centre	Blanchardstown	Dublin
17	Mountview Shopping Centre, Mountview Road	Blanchardstown	Dublin
18	24 Quinsborough Road	Bray	Wicklow
19	Unit 1 and 2, Clarehall Shopping Centre, Malahide Road	Clarehall	Dublin
20	Units 17-19 Dundrum Town Centre	Dundrum	Dublin
21	282 Glasnevin Avenue	Glasnevin	Dublin
22	69 Main Street	Gorey	Wexford
23	312 Lower Kimmage Road, Terenure	Kimmage	Dublin
24	Unit 1/2 Woodstown Shopping Centre, Ballycullen Road	Knocklyon (Woodstown)	Dublin
25	Unit 4, Finnstown Shopping Centre, Newcastle Road	Lucan	Dublin
26	Unit 2 Griffeen Centre	Lucan	Dublin
27	Unit 2 Sandyford Hall Shopping Centre, Kilgobbin Road	Sandyford	Dublin
28	Unit D1Ab Gulliver's Retail Park, Northwood	Santry	Dublin
29	Lidl Shopping Centre, Main Road	Tallaght	Dublin
30	Unit 8-9, Springfield Shopping Centre, Alderwood Avenue	Tallaght	Dublin
31	Kickham Street	Thurles	Tipperary

Source: The Parties

1.9 In addition to its physical stores, McCabes Pharmacy also sells non-prescription OTC products and non-medical products online.¹¹

1.10 For the financial year ending 30 December 2022, McCabes Pharmacy's total worldwide turnover was approximately € [REDACTED], all of which was generated in the State.

Rationale for the Proposed Transaction

1.11 The Parties stated the following in the Merger Notification Form in relation to the rationale for the Proposed Transaction:

¹¹ Merger Notification Form, section 3.3, paragraph 46. See: <https://www.mccabespharmacy.com/>.

“The Proposed Transaction has a strong underpinning commercial rationale and combines the complementary businesses of the PHOENIX Group and McCabes Group in Ireland.

From the PHOENIX Group’s perspective, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

From the perspective of the current shareholders of McCabes Group, [REDACTED]
[REDACTED]
[REDACTED]”¹².

Previous Notification: M/23/056 – LloydsPharmacy/McCabes Pharmacy

1.12 The Commission originally received notification of the Proposed Transaction on 25 October 2023 (“Previous Notification”). As part of its review of the Previous Notification,¹³ the Commission issued a requirement for further information (“RFI”) to both PHOENIX and McCabes Pharmacy on 5 December 2023. Under section 20(2)(c) of the Act, the Commission was required to notify the Parties whether or not it was satisfied that the RFI(s) had been complied with within 10 working days from the date on which it is provided with a certificate under section 20(2)(b)(ii) of the Act. Under section 18(12) of the Act, a notification shall not be valid if the Commission is of the opinion that all the specified information requested under section 20(2) has not been provided, and any determination made on foot of such notification is void.

¹² Merger Notification Form, section 2.6, paragraph 34.

¹³ M/23/056 – LloydsPharmacy/McCabes Pharmacy.

- 1.13 On 29 January 2024, the Commission, having considered both Parties' responses to their respective RFIs and having engaged further with the Parties, informed PHOENIX and McCabes Pharmacy that it was not satisfied pursuant to section 20(2)(c) of the Act that the RFIs issued to PHOENIX and McCabes Pharmacy had been complied with and that in the circumstances of this case, the notification was rendered invalid pursuant to section 18(12) of the Act.
- 1.14 The Parties subsequently re-notified the Proposed Transaction to the Commission.

Preliminary Investigation (“Phase 1”)

Third party submissions

- 1.15 No third party submission was received during the Phase 1 investigation. One third party submission was received during the course of the Commission's review of the Previous Notification. This submission was fully considered by the Commission insofar as it related to potential competition effects arising from the Proposed Transaction.

Market enquires

- 1.16 During the course of its review of the Previous Notification, the Commission identified potential competition concerns in Lucan, Co. Dublin, which led the Commission to engage IPSOS Limited to conduct a consumer survey in Lucan, Co. Dublin (the “Consumer Survey”).¹⁴ The Consumer Survey was conducted over several days in January 2024 in Lucan, Co. Dublin. The results of the Consumer Survey were relied on by the Commission in the Phase 1 investigation.

Phase 1 proposals

- 1.17 During the Phase 1 investigation, the Commission identified preliminary competition concerns in relation to the local catchment areas of two of the Target Pharmacies located in the Lucan area of Dublin.
- 1.18 On 20 March 2024, pursuant to section 20(3) of the Act, PHOENIX submitted draft proposals (the “Draft Proposals”) regarding measures to be taken to ameliorate any

¹⁴ The Consumer Survey was conducted at the following pharmacies: LloydsPharmacy Neilstown Rd; LloydsPharmacy Chaplain's Place; LloydsPharmacy Lucan S.C.; LloydsPharmacy Woodview Court; McCabes Pharmacy Griffeen Centre; and McCabes Pharmacy Finnstown Pharmacy.

effects of the Proposed Transaction on competition in markets for goods or services in the State, with a view to the said proposals becoming binding on PHOENIX. The submission of these draft proposals extended the deadline within which the Commission was required to conclude its assessment of the competitive effects of the Proposed Transaction in Phase 1 by 15 working days to 45 working days in accordance with section 21(4) of the Act.

- 1.19 The Commission market tested the measures contained in Draft Proposals and held calls with third parties as potential purchasers of a divestment package to seek their views on the Draft Proposals.
- 1.20 During the Phase 1 investigation, the Commission also engaged with PHOENIX and its legal advisors to discuss how the Draft Proposals submitted would address the potential competition concerns identified by the Commission (which are outlined in Section 5 of this Determination).
- 1.21 Having considered all the available information in its possession at the time, the Commission was unable to form the view, at the conclusion of its Phase 1 investigation, that the result of the Proposed Transaction would not be to substantially lessen competition in any market for goods or services in the State.
- 1.22 Therefore, on 18 April 2024, the Commission determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation under section 22 of the Act.

Full Investigation (“Phase 2”)

Contact with the Undertakings Involved

- 1.23 During the Phase 2 investigation, the Commission continued to engage with PHOENIX and its legal advisors with respect to the Draft Proposals.

Third Party Submissions

- 1.24 No third party submission was received during the Phase 2 investigation.

Phase 2 Proposals

- 1.25 On 24 April 2024, PHOENIX submitted final proposals (the “Final Proposals”) to the Commission in accordance with section 20(3) of the Act with a view to the Final

Proposals becoming binding on PHOENIX if the Commission took the Final Proposals into account and stated in writing that the Final Proposals formed the basis or part of the basis of its determination under section 22 of the Act in relation to the Proposed Transaction. The Final Proposals are appended to this Determination.

Information Sources Relied Upon

1.26 In forming its conclusions on the Proposed Transaction, as set out in this Determination, the Commission has considered all the relevant information available to it at the time of making the Determination and in particular information provided by the Parties to the Commission, information obtained from third parties, the Consumer Survey and other information available in the public domain.

2. INDUSTRY BACKGROUND

2.1 The Parties are active in the retail pharmacy sector. Pharmacies dispense POHPPs, OTC products, FOS products and provide advice and counselling. There are two types of pharmacies active in the State: retail pharmacies and hospital pharmacies.¹⁵ According to the Pharmaceutical Society of Ireland, there were 1,904 retail pharmacies in the State as of November 2023.¹⁶ According to a 2020 study, Ireland has one of the lowest population-per-pharmacy figures in the world.¹⁷ There were 2,400 residents per pharmacy in the State in 2020, in comparison to 2,900 in France, 4,000 in Germany, 3,300 in Italy and 4,500 in the UK.¹⁸

¹⁵ Hospital pharmacies source pharmaceutical products through a different route to market than retail pharmacies.

¹⁶ <https://www.thepsi.ie/gns/Registration/pharmacies/overview.aspx>.

¹⁷ Henman, Martin C. (2020) "Primary Health Care and Community Pharmacy in Ireland: a lot of visions but little progress", International Series: Integration of community pharmacy in primary health care, Vol. 1, No. 4, page 3.

¹⁸ Irish Pharmacy Union (2021) *Annual Review of Community Pharmacy in Ireland 2020*, page 14.

3. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

Introduction

3.1 In this section, the Commission identifies the potential product and geographic markets that are relevant for the assessment of the likely competitive effects of the Proposed Transaction. This section sets out:

- (a) horizontal and vertical overlaps between the Parties' activities;
- (b) relevant principles that apply to market definition;
- (c) relevant product markets;
- (d) relevant geographic markets; and
- (e) the Commission's conclusions on relevant market definition.

3.2 Market definition provides a framework for assessing the competitive effects of a merger; it is a means to an end. The boundaries of a market do not determine the outcome of the analysis of the competitive effects to be assessed by the Commission in its merger review, as there can be competitive constraints on the merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints will be more significant than others.¹⁹ The Commission expects to take such factors into account in its assessment of competitive effects, where relevant.

Horizontal and Vertical Overlaps

Horizontal overlaps

3.3 In the Merger Notification Form, the Parties have addressed the horizontal overlaps between the respective activities as follows:

¹⁹ The Commission's Merger Guidelines, paragraph 2.1 and 2.3

“The Proposed Transaction gives rise to only one area of horizontal overlap between the parties’ activities in the State, i.e. the operation of retail pharmacies.”²⁰

3.4 The Commission agrees with the Parties’ views on horizontal overlap.

Vertical Relationship

3.5 With respect to vertical overlaps between their respective activities, the Parties stated that the Proposed Transaction gives rise to the following vertical relationships:²¹

- The full-line wholesale supply of POHPPs;
- The wholesale supply of medical products to retail pharmacies; and
- The wholesale supply of FOS products and non-pharmacy-only products to retail pharmacies.

3.6 The Commission agrees with the Parties’ views on the existing vertical relationships. However, the Commission has also identified a further potential vertical relationship. PHOENIX, through United Drug, provides buying group services to retail pharmacies in the State.²² Therefore, the Commission has also identified the provision of buying group services to retail pharmacies as a potential vertical relationship between the Parties.

Relevant principles

3.7 The role of market definition is explained in the Commission’s Merger Guidelines as follows:

“Market definition is a conceptual framework within which relevant information can be organised for the purposes of assessing the competitive effect of a merger. Identifying the precise relevant market involves an element of judgement. It is often not possible or even necessary to draw a clear line around the fields of rivalry. Indeed, it is often possible to determine a merger’s likely

²⁰ Merger Notification Form, section 4.1, paragraph 48.

²¹ Merger Notification Form, section 4.2, paragraph 54.

²² A buying group negotiates directly with manufacturers for discounts and supply terms for their member pharmacies, which pay monthly membership fees. United Drug operates the Pharma Le Chéile buying group.

impact on competition without precisely defining the boundaries of the relevant market”²³

“...if an SLC [substantial lessening of competition] can be shown when a merger is evaluated with respect to a number of alternative markets, there is no need to choose between them; it will be sufficient to show that the merger will result in an SLC regardless of the choice of market definition.”²⁴

3.8 According to the Commission’s Merger Guidelines:

“The relevant product market is defined in terms of products rather than producers. It is the set of products that customers consider to be close substitutes. In identifying the relevant product market, the Commission will pay particular attention to the behaviour of customers, i.e., demand-side substitution. Supply-side substitution (i.e., the behaviour of existing and/or potential suppliers in the short term) may also be considered.”²⁵

3.9 The relevant market contains the most significant alternatives available to the customers of the merging parties. Identifying the precise relevant market involves an element of judgement, with appropriate weight being given to factors on both the demand and supply side.²⁶

3.10 The Commission’s Merger Guidelines note that:

“Whether or not a product is a close substitute of a product supplied by one or more of the merging parties will depend on the willingness of customers to switch from one product to the other in response to a small but significant and non-transitory increase in price (or an equivalent decrease in quality). This will involve an assessment of the characteristics and functions of the products in question.”²⁷

²³ The Commission’s Merger Guidelines, paragraph 2.3.

²⁴ The Commission’s Merger Guidelines, paragraph 2.4.

²⁵ The Commission’s Merger Guidelines, paragraph 2.8.

²⁶ The Commission’s Merger Guidelines, paragraph 2.2.

²⁷ The Commission’s Merger Guidelines, paragraph 2.9.

- 3.11 The standard economic test for defining the relevant market is the small but significant non-transitory increase in price (“SSNIP”) test.²⁸ The SSNIP test seeks to identify the smallest group of products and geographic areas within which a hypothetical monopolist could profitably impose a SSNIP (usually 5-10%), or an equivalent decrease in quality, without a sufficient number of consumers/service purchasers switching to alternative products to render the price increase non-profitable. However, the Commission notes that the SSNIP test is just one of the tools used in defining the relevant product market, and its applicability varies depending on pricing practices in the market. A substantial emphasis should also be placed on product characteristics, price and intended use as well as observed substitution patterns between various products that can potentially be included in the same product market.
- 3.12 As noted in the Commission’s Merger Guidelines: *“Market definition should not restrict the range of competitive effects to be assessed by the Commission in its merger review.”*²⁹ In coming to a view of the relevant product and geographic markets, the Commission may therefore *“consider segmentation within the relevant market or factors outside the relevant market that impose competitive constraints on firms in the relevant market.”*³⁰
- 3.13 Ultimately, the Commission’s definition of the relevant market or markets depends on the specific facts, circumstances, and evidence of the merger or acquisition under investigation.³¹

Relevant Product Markets

Previous decisions

- 3.14 The Commission has considered previous merger decisions involving the operation of retail pharmacies in the State that are of some relevance to its assessment of the Proposed Transaction.³²

²⁸ The SSNIP test is discussed in detail in the Commission’s Merger Guidelines, paragraphs 2.9-2.14.

²⁹ The Commission’s Merger Guidelines, paragraph 2.1.

³⁰ The Commission’s Merger Guidelines, paragraph 2.1.

³¹ The Commission’s Merger Guidelines, paragraph 2.6.

³² For example, see the Commission’s determinations in *M/20/027 – Uniphar/Hickey’s*, available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/09/M-20-027-Uniphar-Hickeys-Determination-PUBLIC.pdf>, and

3.15 The Commission recently considered an acquisition in this sector in M/22/049 – *Uniphar/LXV Remedies (Sam McCauley)*, where the Commission assessed the competitive impact of that transaction by reference to several potential relevant product markets, including:

- the operation of retail pharmacies;
- the full-line wholesale supply of POHPPs;
- the provision of buying group services to retail pharmacies;
- the wholesale supply of medical products to retail pharmacies; and
- the wholesale supply of FOS products and non-pharmacy-only products to retail pharmacies.

Views of the Parties

3.16 The Parties stated in the Merger Notification Form that the definition of the relevant product market could be left open.³³ As noted above, the Parties identified the operation of retail pharmacies as the only area of horizontal overlap.³⁴ The Parties also identified several vertical relationships, as outlined in paragraph 3.5 above.³⁵

Views of the Commission

3.17 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product market because doing so will not alter the Commission's assessment of the competitive impact of the Proposed Transaction. However, for the purposes of its competitive analysis of the horizontal overlap and vertical relationships that exists between the Parties, the Commission has assessed the

M/15/021 – *Lloyds Pharmacy/Walsh's and Friary Allcare Pharmacies*, available at: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m1521-lloyds-pharmacywalshs-friary-allcare-pharmacies/>.

³³ Merger Notification Form, section 5.1, paragraph 77 and 81.

³⁴ Merger Notification Form, section 4.1, paragraph 48.

³⁵ Merger Notification Form, section 4.2, paragraph 54.

competitive impact of the Proposed Transaction by reference to the following potential relevant product markets:

- the operation of retail pharmacies;
- the full-line wholesale supply of POHPPs;
- the provision of buying group services to retail pharmacies;
- the wholesale supply of medical products to retail pharmacies; and
- the wholesale supply of FOS products and non-pharmacy-only products to retail pharmacies;

Relevant Geographic Markets

3.18 Having identified five potential relevant product markets, the Commission will now assess the geographic dimension of each of these potential product markets.

Previous decisions

3.19 As noted above, the Commissioned has considered previous merger decisions in the pharmacy sector when assessing the Proposed Transaction.

3.20 In its most recent determination in this sector, M/22/049 – *Uniphar/LXV Remedies (Sam McCauley)*, the Commission assessed the competitive impact of that transaction by reference to several potential relevant geographic markets, including:

- the operation of retail pharmacies in the State;
- the operation of retail pharmacies within a catchment area of 2km of each target pharmacy;
- the full-line wholesale supply of POHPPs in the State;
- the provision of buying group services to retail pharmacies in the State;
- the wholesale supply of medical products to retail pharmacies in the State; and

- the wholesale supply of FOS products and non-pharmacy-only products to retail pharmacies in the State.

Views of the Parties

3.21 The Parties stated in the Merger Notification Form that, in their view, the relevant geographic market could be left open.³⁶

Commission's analysis of the relevant geographic market

3.22 As noted above, the Commission has previously applied a 2km catchment area around the relevant pharmacy when assessing the local competitive effects of pharmacy mergers. A range of information obtained by the Commission during the course of its review of the Proposed Transaction indicated that a catchment area of 2km around the respective pharmacy is an appropriate frame of reference to assess the operation of retail pharmacies. This information included the Consumer Survey and customer location information provided by the Parties.

3.23 The Consumer Survey indicated that the retail pharmacy market is highly local. Most respondents stated that the convenience of a pharmacy's location was a key factor they consider when deciding which pharmacy to visit. 57% of respondents stated that they had travelled for five minutes or less to their respective pharmacy, while 82% had travelled for 10 minutes or less to their respective pharmacy.

3.24 The Parties submitted a report by RBB Economics (the "RBB Economics Report"). The RBB Economics Report assessed customer location data for the Parties' pharmacies in Lucan. The RBB Economics Report stated that "[t]hese customer location data broadly confirm the relevance of the 2km radius catchment areas previously used by the CCPC."³⁷ LloydsPharmacy and McCabes Pharmacy provided 80th percentile catchment areas for each of its retail pharmacies in Lucan.³⁸ While these 80th percentile catchment areas varied by pharmacy (ranging from 1.4km to 2.8km), they indicated that the 2km

³⁶ Merger Notification Form, section 5.1, paragraph 77.

³⁷ RBB Economics Report, page 2.

³⁸ 80th percentile catchment areas refer to the area within which the closest 80% of a pharmacy's customers are located.

catchment area previously applied by the Commission is an appropriate radius within which to assess the operation of retail pharmacies.

3.25 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant geographic market because doing so will not alter the Commission's assessment of the competitive impact of the Proposed Transaction. However, for the purposes of its competitive analysis of the overlaps that exists between the Parties, the Commission has assessed the competitive impact of the Proposed Transaction by reference to the following potential relevant geographic markets:

- the operation of retail pharmacies in the State;
- the operation of retail pharmacies within a catchment area of 2km of each Target Pharmacy;
- the full-line wholesale supply of POHPPs in the State;
- the provision of buying group services to retail pharmacies in the State;
- the wholesale supply of medical products to retail pharmacies in the State; and
- the wholesale supply of FOS products and non-pharmacy-only products to retail pharmacies in the State.

Overall conclusion on relevant market definition

3.26 Having regard to the evidence available to it, the Commission has assessed the competitive effects of the Proposed Transaction by reference to the following potential relevant markets:

- the operation of retail pharmacies in the State;
- the operation of retail pharmacies within a catchment area of 2km of each Target Pharmacy;
- the full-line wholesale supply of POHPPs in the State;

- the provision of buying group services to retail pharmacies in the State;
- the wholesale supply of medical products to retail pharmacies in the State; and
- the wholesale supply of FOS products and non-pharmacy-only products to retail pharmacies in the State.

3.27 As the Commission has not come to a definitive view in respect of any potential relevant market, throughout this Determination whenever we refer to “market” or “markets” we are referring to a potential market or potential markets.

4. RELEVANT COUNTERFACTUAL

Introduction

4.1 The test in section 22(3) of the Act - namely, whether, or not, the merger or acquisition will result in a substantial lessening of competition (“SLC”) in markets for goods or services in the State - requires an assessment of the effects of a merger or acquisition on the state of competition in a relevant market. In assessing the likely effects of a merger on competition, the Commission, as in the present case, typically compares the situation that may be expected to arise following the merger with that which would have prevailed without the merger. The market situation without the merger is often referred to as the “*counterfactual*”. The Commission generally adopts the prevailing conditions of competition as the counterfactual against which it assesses the impact of the merger.³⁹

4.2 The Commission’s Merger Guidelines state that:

“The term ‘counterfactual’ refers to the state of competition without the merger or acquisition. In other words the “actual” situation is the merger being put into effect and the “counterfactual” is the situation in the absence of the merger being put into effect. The counterfactual provides the reference point, or the point of comparison, for assessing competitive effects arising from a merger.”⁴⁰

4.3 Inevitably there is a degree of uncertainty as regards hypothetical future events, and the Commission will consider all the evidence adduced by the parties as to whether there is likely to be an SLC in the future. The Commission must ultimately ask itself whether it is satisfied on the balance of probabilities that there will be an SLC caused by the merger. The Commission is, however, not under an obligation to make findings of fact (whether on a balance of probabilities basis or otherwise) in respect of each item of evidence. Nor is it obliged to find that any particular potential event is more likely than not to occur before it can take it into account in its overall assessment of the probability of SLC.

4.4 Paragraph 1.15 of the Merger Guidelines states the following:

³⁹ See Commission’s Merger Guidelines, paragraph 1.12.

⁴⁰ See Commission’s Merger Guidelines, paragraph 1.12.

“[T]he Commission will expect the merging parties to substantiate any counterfactual they propose with objective evidence supported, where necessary, by independent expert analysis. Such evidence and analysis should obviously be consistent with the parties’ own internal pre-merger assessments of the likely counterfactual.”

Views of the Parties

4.5 The Parties did not comment on the relevant counterfactual to the Proposed Transaction.

Views of the Commission

4.6 The Commission’s investigation has revealed no evidence to suggest that a relevant counterfactual other than the prevailing conditions of competition would be the appropriate counterfactual against which the Proposed Transaction should be assessed.

The Commission’s conclusion on the relevant counterfactual

4.7 Based on the above, for the purposes of assessing the Proposed Transaction, the Commission considers that the relevant counterfactual is that, absent the Proposed Transaction, McCabes Pharmacy would remain in the market and the status quo would prevail. The prevailing conditions of competition would be maintained and McCabes Pharmacy would remain an independent undertaking active in the potential markets set out in Section 3 of this Determination.

5. COMPETITIVE ASSESSMENT HORIZONTAL UNILATERAL EFFECTS

Introduction

5.1 In this section, the Commission sets out its analysis of the likelihood of horizontal unilateral effects occurring from the implementation of the Proposed Transaction in the following potential markets:

- The operation of retail pharmacies in the State; and
- The operation of retail pharmacies within a catchment area of 2km from each Target Pharmacy.

5.2 Unilateral effects, as explained in paragraph 4.8 of the Commission’s Merger Guidelines, occur when “a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors.”

5.3 In addition, the European Commission’s Horizontal Merger Guidelines state the following in respect of “Non-coordinated effects”:

“A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers, who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms’ price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.”⁴¹

⁴¹ The European Commission’s Horizontal Merger Guidelines, paragraph 24.

*A number of factors, which taken separately are not necessarily decisive, may influence whether significant non-coordinated effects are likely to result from a merger. Not all of these factors need to be present for such effects to be likely”.*⁴²

- 5.4 In considering the likelihood of the Proposed Transaction resulting in unilateral effects, the Commission assessed the arguments put forward by the Parties and the evidence collected from the Parties and third parties. Following that assessment, the Commission has identified preliminary competition concerns which are detailed below.

The operation of retail pharmacies in the State

- 5.5 There are approximately 1,904 retail pharmacies in the State.⁴³ LloydsPharmacy currently owns 79 retail pharmacies, holding a share of approximately [0-5]% of the number of retail pharmacies active in the State. McCabes Pharmacy currently operates 31 retail pharmacies, holding a share of approximately [0-5]% of the number of retail pharmacies active in the State. Following the implementation of the Proposed Transaction, LloydsPharmacy will hold an estimated share of approximately [5-10]% of the retail pharmacies operated in the State. Therefore, at a national level, the Proposed Transaction would result in a minimal increase in LloydsPharmacy’s share of the number of retail pharmacies in the State.

- 5.6 Furthermore, there will remain a significant number of retail pharmacies active across the State, including retail pharmacy chains, such as *Boots, Pure, Mulligans, McCauleys, Hickey’s, Allcare, Life Pharmacy*,⁴⁴ and independent retail pharmacies,⁴⁵ that will continue to exert a competitive constraint on LloydsPharmacy, on a national basis, following the implementation of the Proposed Transaction.

- 5.7 Therefore, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the operation of retail pharmacies in the

⁴² The European Commission’s Horizontal Merger Guidelines, paragraph 26.

⁴³ Pharmaceutical Society of Ireland (2023) *Pharmacy Statistics: A summary of the pharmacy register*. Available at: https://www.thepsi.ie/Libraries/Monthly_Statistics/Pharmacies_-_Website_Statistics.sflb.ashx (accessed 28 February 2024).

⁴⁴ *McCauley’s, Hickey’s, Allcare* and *Life Pharmacy* are owned (or partly owned) by Uniphar.

⁴⁵ Independent retail pharmacies are those which are neither part of a chain of retail pharmacies nor owned by an upstream wholesaler.

State, when the Proposed Transaction is assessed using the State as a whole as the geographic frame of reference.

The operation of retail pharmacies within a catchment area of 2km from each Target Pharmacy

Catchment areas with no horizontal overlaps

5.8 McCabes Pharmacy operates 31 retail pharmacies across the State. 14 of the Target Pharmacies are not located within 2km of a LloydsPharmacy retail pharmacy. Table 2 below provides a list of the Target Pharmacies that are not located within 2km of a LloydsPharmacy retail pharmacy.

Table 2: Target Pharmacies which are not located within 2km of a LloydsPharmacy retail pharmacy

	Target Pharmacy	Nearest LloydsPharmacy retail pharmacy	Approximate distance between both pharmacies
1	51 Leinster Street, Athy, Co. Kildare	Lloyds Crookstown Service Station	12.43 km
2	Units 6 to 8 Citywest Shopping Centre, Citywest, Dublin	Lloyds The Square S.C.	3.49 km
3	Unit 5, The Crescent Shopping Centre, Dooradoyle, Limerick	Lloyds Roxboro S.C.	2.25km ⁴⁶
4	Unit 3 Adelphi Court, The Long Walk, Dundalk, Co. Louth	Lloyds Blanchardstown	68.73 km
5	Unit 1, Station Road, Lusk, Co. Dublin	Lloyds Tonlegee Road	15.27 km
6	Unit 2 Yellow Walls Road, Malahide, Co. Dublin	Lloyds Northside S.C	6.78 km
7	Units 3 and 4 Malahide Shopping Centre, Malahide, Co. Dublin	Lloyds Kilbarrack	7.03km

⁴⁶ There are approximately 18 retail pharmacies within Limerick city. There are 5 third party retail pharmacies located closer to the Target Pharmacy in the Crescent Shopping Centre than LloydsPharmacy at Roxboro S.C. Consequently, the Commission did not identify potential competition concerns arising from the Proposed Transaction in relation to Limerick city.

8	Unit 4, Newcastle SC, Main Street, Newcastle, Dublin 22	Lloyds Lucan S.C.	6.16 km
9	Unit 1, Veronica House, Skerries Corner, Lower M.S, Rush, Co. Dublin	Lloyds Kilbarrack Road	15.49 km
10	Unit 1, Airside Shopping Centre, Holywell Link Road, Swords, Co. Dublin	Lloyds Northside S.C.	5.45km
11	Unit G24, Pavilions Shopping Centre, Swords, Co. Dublin	Lloyds Northside S.C	6.53 km
12	Ridgewood Shopping Centre, Forest Road, Swords, Co. Dublin	Lloyds Northside S.C.	5.81 km
13	Unit 4, Swords Shopping Centre, Rathbeale Rd, Commons West, Swords, Co. Dublin	Lloyds Northside S.C.	7.49 km
14	2 North Main Street, Wexford Town, Co. Wexford	Lloyds Rosslare	12.6 km

Source: The Parties

5.9 As LloydsPharmacy does not own any retail pharmacy within 2km of any of these Target Pharmacies, the Commission considers that the Proposed Transaction will not raise horizontal competition concerns in the operation of retail pharmacies in these catchment areas.

Catchment areas with horizontal overlaps

5.10 The Commission has identified 17 Target Pharmacies located within 2km of a LloydsPharmacy retail pharmacy, resulting in 17 catchment areas in which there is a horizontal overlap between the Parties.

5.11 Table 3 below provides an overview of the local areas where there is a LloydsPharmacy retail pharmacy within a 2km of a Target Pharmacy.

Table 3: Overview of catchment areas where LloydsPharmacy operates a retail pharmacy within 2km of a Target Pharmacy

Catchment Area	Target Pharmacy	LloydsPharmacy Pharmacy in catchment area	Approximate distance from Target Pharmacy	Number of third-party pharmacies in catchment area (Number of competitors ⁴⁷)
1	Unit 8 College View, Ballymun, Dublin.	Lloyds Omni Park S.C	1.11 km	13 (11)
		Lloyds Glasnevin	1.64 km	
2	Unit 148 Blanchardstown Shopping Centre, Blanchardstown, Co. Dublin	Lloyds Supervalu S.C.	1.11 km	14 (12)
3	Mountview Shopping Centre, Mountview Road, Blanchardstown, Dublin	Lloyds Supervalu S.C.	1.9 km	11 (9)
4	24 Quinsborough Road, Bray, Co. Wicklow	Lloyds Castle Street S.C.	0.2 km	11 (11)
		Lloyds Bray Primary Care Centre	0.6km	
5	Unit 1 and 2, Clarehall Shopping Centre, Malahide Road, Dublin	Lloyds Tonlegee Road	1.74 km	14 (12)
6	Units 17-19 Dundrum Town Centre, Co. Dublin	Lloyds Churchtown	1.68km	17 (16)
		Lloyds Nutgrove	1.84km	
7		Lloyds Finglas	0.78km	20 (14)

⁴⁷ "Competitors" in this instance refers to the number of different operators of retail pharmacies within a catchment area. For the purposes of this Determination, related brands (such as Uniphar Group plc's businesses "Allcare", "Hickey's Pharmacy", "McCauley Health & Beauty" and "Life") are considered as a single competitor. The number of competitors is the figure included within the brackets in this column.

	282 Glasnevin Avenue, Glasnevin, Dublin	Lloyds Glasnevin	1.15km	
8	69 Main Street, Gorey, Co. Wexford	Lloyds Gorey	0.32km	7 (5)
9	312 Lower Kimmage Road, Terenure, Dublin	Lloyds St Agnes Road Crumlin	1.43km	22 (13)
		Lloyds Ashleaf Shopping Centre	1.47km	
10	Unit 1/2 Woodstown Shopping Centre, Ballycullen Road, Knocklyon, Dublin 16	Lloyds Knocklyon	1.17km	4 (4)
11	Unit 4, Finnstown Shopping Centre, Newcastle Road, Lucan, Co. Dublin	Lloyds Lucan S.C	0.75km	3 (3)
		Lloyds Woodview	1.52 km	
12	Unit 2 Griffeen Centre, Lucan, Co Dublin	Lloyds Lucan S.C	1.57km	1 (1)
13	Unit 2 Sandyford Hall Shopping Centre, Kilgobbin Road, Sandyford, Co. Dublin	Lloyds Leopardstown	1.29km	9 (7)
14	Unit D1Ab Gulliver's Retail Park, Northwood, Santry, Co. Dublin	Lloyds Omni S.C.	1.52km	10 (9)
15	Lidl Shopping Centre, Main Road, Tallaght, Dublin	Lloyds The Square S.C.	1.1km	11 (9)
		Lloyds Aylesbury	1.6km	
16	Unit 8-9, Springfield Shopping Centre, Alderwood Avenue, Tallaght, Dublin 24	Lloyds The Square S.C.	0.79km	14 (12)
		Lloyds Aylesbury	1.65km	

17	Kickham Street, Thurles, Co Tipperary	Lloyds Thurles	0.81km	7 (7)
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Source: The Commission

5.12 There will remain a considerable number of non-LloydsPharmacy owned retail pharmacies in most of the catchment areas shown in Table 3 above, in which the Parties would overlap following the implementation of the Proposed Transaction. Furthermore, there will be 5 or more competitors in the vast majority of these catchment areas in which the Parties would overlap following the implementation of the Proposed Transaction. The Commission considers that these third party retail pharmacies, by reason of their presence within the 2km catchment area, will continue to exert a significant competitive constraint on LloydsPharmacy following the Proposed Transaction.

5.13 However, the Commission has identified two catchment areas in which there would be limited competing fascia following the Proposed Transaction. These catchment areas are:

- 2km from the Target Pharmacy at Unit 4, Finnstown Shopping Centre, Newcastle Road, Lucan, Co. Dublin (“Lucan Catchment Area 1”); and
- 2km from the Target Pharmacy at Unit 2 Griffeen Centre, Lucan, Co. Dublin (“Lucan Catchment Area 2”).

5.14 Therefore, the Commission has considered each of these two catchment areas in further detail below.

Potential relevant markets in which the Commission identified potential competition concerns arising from the Proposed Transaction

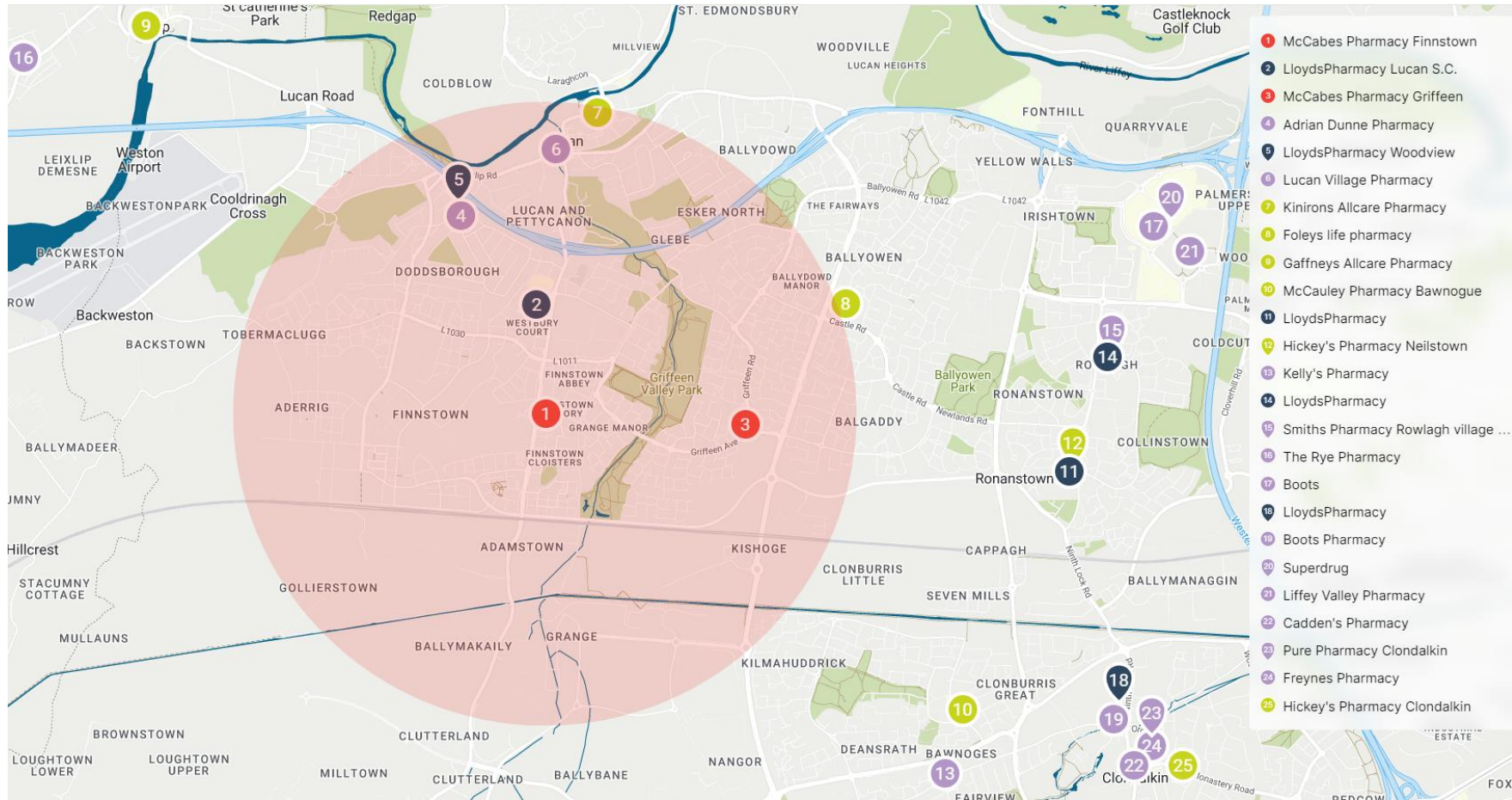
5.15 The Commission identified potential competition concerns in relation to the operation of retail pharmacies in the following catchment areas:

- Lucan Catchment Area 1; and,
- Lucan Catchment Area 2.

Lucan Catchment Area 1

5.16 Figure 1 below shows Lucan Catchment Area 1 and its surrounding areas. Table 4 below lists the retail pharmacies active within Lucan Catchment Area 1.

Figure 1: Map of Lucan Catchment Area 1⁴⁸



Source: The Commission

⁴⁸ The shaded red circle is a rough indication of the 2km catchment area. Target Pharmacies are coloured red, LloydsPharmacy retail pharmacies are coloured blue, retail pharmacies of brands related to Uniphar Group plc are coloured green, and other retail pharmacies are coloured purple.

Table 4: Retail pharmacies with Lucan Catchment Area 1

NO.	PHARMACY	LOCATION	DISTANCE TO TARGET
1	McCabes Pharmacy Finnstown	Unit 4, Finnstown Shopping Centre, Newcastle Road, Lucan, Co. Dublin.	N/A
2	LloydsPharmacy Lucan S.C.	Unit 4-5, Lucan Shopping Centre, Newcastle Rd, Esker South, Lucan, Co. Dublin.	0.71km
3	McCabes Pharmacy Griffeen	Units 1 & 2, The Griffeen Centre, Lucan, Co Dublin.	1.28km
4	Adrian Dunne Pharmacy	Unit 4, Tesco Shopping Centre, Hillcrest Dr, Lucan, Co. Dublin.	1.39km
5	LloydsPharmacy Woodview	1, 2 Woodview, Tandy's Ln, Doddsborough, Lucan, Co. Dublin.	1.45km
6	Lucan Village Pharmacy	4 Main St, Lucan Demesne, Lucan, Co. Dublin.	1.70km
7	Kinirons Allcare Pharmacy	Main St, Lucan and Pettycanon, Lucan, Co. Dublin.	1.96km

Source: The Commission

5.17 Figure 1 and Table 4 show that LloydsPharmacy owns two retail pharmacies within Lucan Catchment Area 1, which are located at: (i) Unit 4-5, Lucan Shopping Centre, Newcastle Rd, Lucan, Co. Dublin (“LloydsPharmacy Lucan Shopping Centre”); and (ii) 2 Woodview, Tandy's Lane, Lucan, Co. Dublin (“LloydsPharmacy Woodview”). Following the implementation of the Proposed Transaction, there will be three remaining competitors, each operating a single retail pharmacy, within Lucan Catchment Area 1.

Closeness of competition

5.18 The Commission has considered the extent to which LloydsPharmacy and McCabes Pharmacy are close competitors in Lucan Catchment Area 1. Specifically, the

Commission has assessed the competitive constraint the following retail pharmacies exert on one another:

- McCabes Pharmacy Finnstown and LloydsPharmacy Lucan Shopping Centre; and
- McCabes Pharmacy Finnstown and LloydsPharmacy Woodview.

5.19 The Commission has assessed the competitive constraint between McCabes Pharmacy Griffeen and LloydsPharmacy Lucan Shopping Centre within the context of Lucan Catchment Area 2. Furthermore, while McCabes Pharmacy Griffeen and LloydsPharmacy Woodview are both located within Lucan Catchment Area 1, the Consumer Survey and customer location data demonstrated that these pharmacies do not exert a competitive constraint on one another.

Competitive Constraint: McCabes Pharmacy Finnstown – LloydsPharmacy Lucan Shopping Centre

Consumer Survey

5.20 The Consumer Survey asked customers of McCabes Pharmacy Finnstown what they would do if the pharmacy was closed for 6 months. 87% of respondents stated they would have gone to another pharmacy. The breakdown of which pharmacy these respondents would have gone to is shown in Table 5 below.

Table 5: Consumer Survey (McCabes Pharmacy Finnstown respondents that would go to another pharmacy)

Consumer Survey Response	Percentage
LloydsPharmacy Lucan Shopping Centre Pharmacy	58%
Don't know	8%
Adrian Dunne Pharmacy	7%
LloydsPharmacy Woodview Pharmacy	5%
Lucan Village Pharmacy	5%
Other ⁴⁹	18%
Total	100% ⁵⁰

Source: *The Consumer Survey*

⁴⁹ 2% of respondents stated that would switch to McCabes Pharmacy Griffeen Centre if McCabes Pharmacy Finnstown was closed.

⁵⁰ Percentages have been rounded.

- 5.21 The Consumer Survey indicates that LloydsPharmacy, and particularly LloydsPharmacy Lucan Shopping Centre, exerts a strong competitive constraint on McCabes Pharmacy Finnstown; just under two thirds of McCabes Pharmacy Finnstown’s customers would switch to LloydsPharmacy Lucan Shopping Centre if McCabes Pharmacy Finnstown was closed.
- 5.22 The Consumer Survey also asked customers of LloydsPharmacy Lucan Shopping Centre what they would do if that pharmacy was closed for 6 months. 86% of respondents stated they would have gone to another pharmacy. The breakdown of which pharmacy these respondents would have gone to is shown in Table 6 below.

Table 6: Consumer Survey (LloydsPharmacy Lucan Shopping Centre respondents that would go to another pharmacy)

Consumer Survey Response	Percentage
Lucan Village Pharmacy	21%
Adrian Dunne Pharmacy	15%
McCabes Finnstown Pharmacy	14%
Pharmacy was not listed on map	11%
McCabes Pharmacy Griffeen Pharmacy	9%
LloydsPharmacy Woodview	7%
Boots Liffey Valley Pharmacy	7%
Foleys Life Pharmacy	6%
Others	9%
Total	100% ⁵¹

Source: Consumer Survey

- 5.23 The Consumer Survey indicates that McCabes Pharmacy Finnstown also exerts a competitive constraint on LloydsPharmacy, albeit not to the same extent as LloydsPharmacy exerts on McCabes Pharmacy Finnstown. 14% of LloydsPharmacy Lucan Shopping Centre’s customers would switch to McCabes Pharmacy Finnstown, while 23% of its customers would switch to a McCabes Pharmacy retail pharmacy (either Finnstown or Griffeen Centre). 7% of respondents stated that they would switch to another LloydsPharmacy retail pharmacy, namely LloydsPharmacy Woodview, if LloydsPharmacy Lucan Shopping Centre was closed.

⁵¹ Percentages have been rounded.

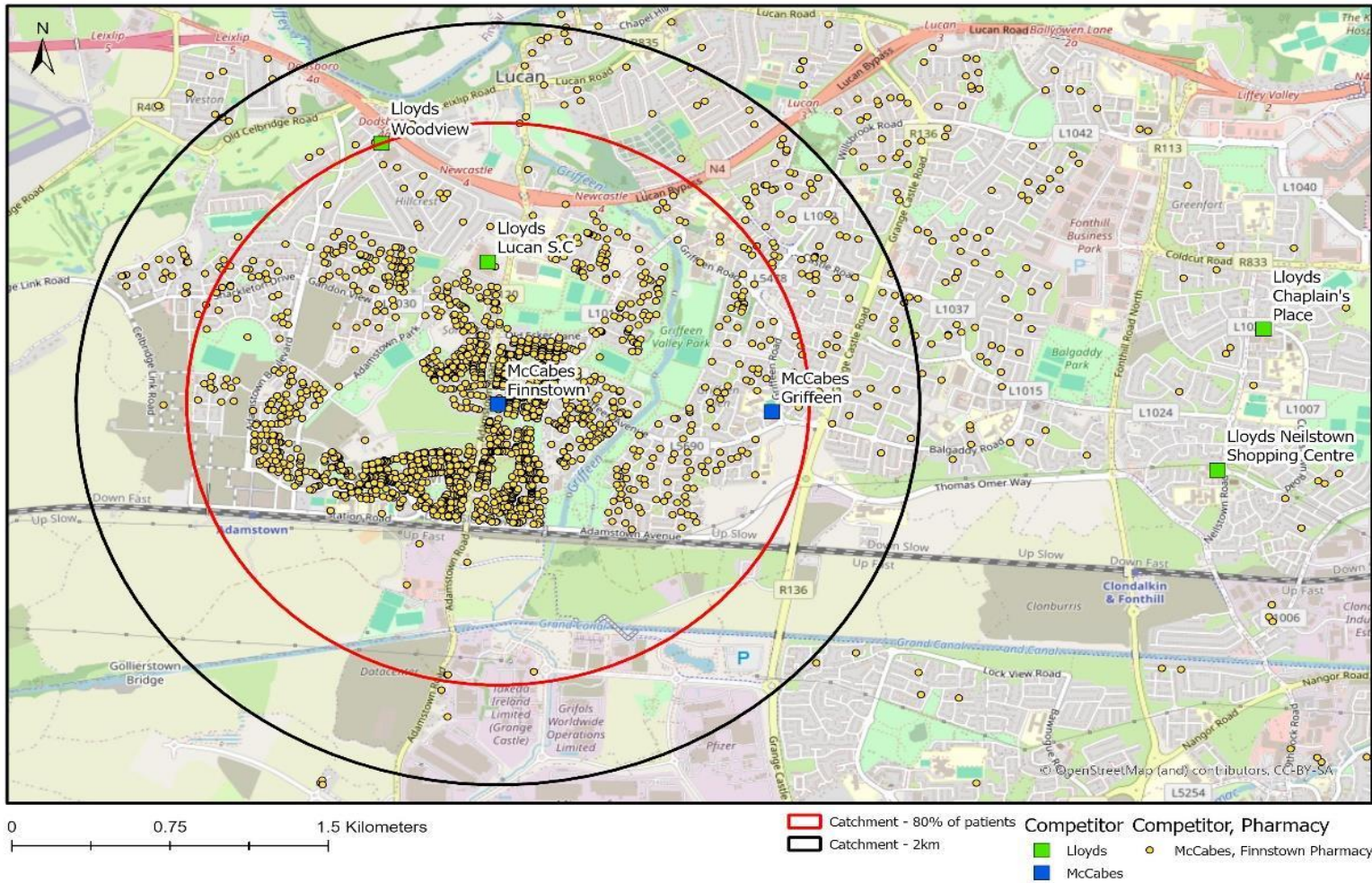
Customer Overlaps

- 5.24 The RBB Economics Report submitted by the Parties provided maps which detailed the locations of each of the Parties' retail pharmacy customers in Lucan Catchment Area 1.⁵²
- 5.25 Figures 2 and 3 show the locations of McCabes Pharmacy Finnstown and LloydsPharmacy Lucan Shopping Centre's customers, respectively.⁵³

⁵² The customer data relied upon was based on the addresses of customers who filled prescriptions with the relevant pharmacy in 2023.

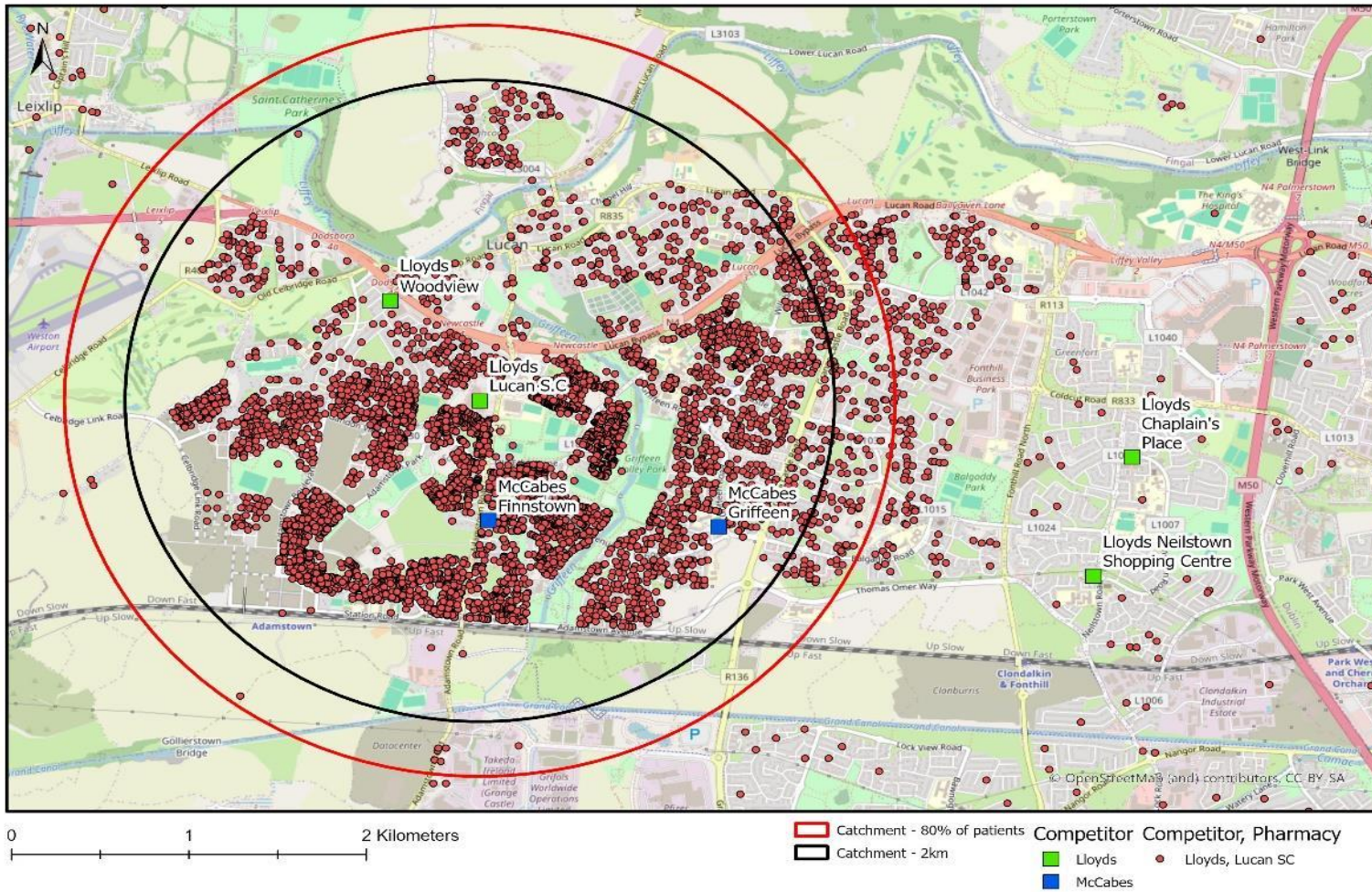
⁵³ In each map, the inner ring represents the area within which 80% of each respective pharmacies' customers are located, while the outer ring represents a 2km radius.

Figure 2: McCabes Pharmacy Finnstown customers



Source: RBB Economics Report

Figure 3: LloydsPharmacy Lucan Shopping Centre customers



Source: RBB Economics Report

- 5.26 As shown by the maps above, McCabes Pharmacy Finnstown draws its customers from the area immediately surrounding its store. LloydsPharmacy Lucan Shopping Centre draws its customers from across Lucan Catchment Area 1 (mainly to the south of the N4 road), including from the area immediately surrounding McCabes Pharmacy Finnstown.
- 5.27 This indicates that McCabes Pharmacy Finnstown and LloydsPharmacy Lucan Shopping Centre compete for the same customers within a relatively narrow area. Furthermore, McCabes Pharmacy Finnstown and McCabes Pharmacy Griffeen Centre are the only retail pharmacies active to the south of LloydsPharmacy Lucan Shopping Centre within Lucan Catchment Area 1.
- 5.28 Based on available information, the Commission considers that it is likely that McCabes Pharmacy Finnstown and LloydsPharmacy Lucan Shopping Centre exert strong competitive constraints upon one another. These constraints would be removed following the implementation of the Proposed Transaction.

Competitive Constraint: McCabes Pharmacy Finnstown – LloydsPharmacy Woodview

Consumer Survey

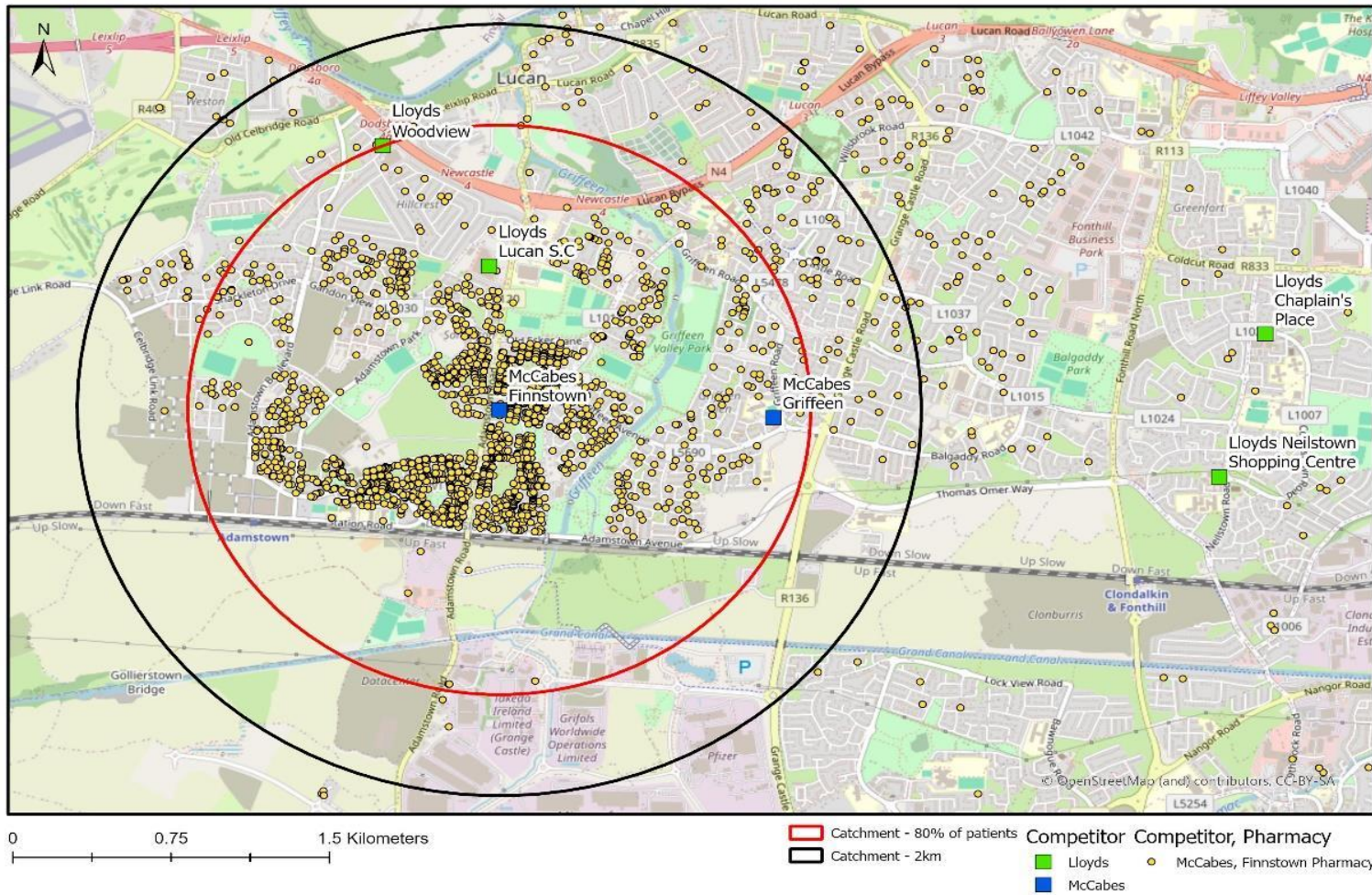
- 5.29 As noted above, the Consumer Survey asked customers of McCabes Pharmacy Finnstown what they would do if the pharmacy was closed for 6 months. 87% of respondents stated they would have gone to another pharmacy. Of these respondents, only 5% stated that they would switch to LloydsPharmacy Woodview.
- 5.30 The Consumer Survey also asked customers of LloydsPharmacy Woodview what they would do if the pharmacy was closed for 6 months. 76% of respondents stated they would have gone to another pharmacy. No respondent stated that they would have switched to McCabes Pharmacy Finnstown.

Customer Overlaps

- 5.31 Figures 4 and 5 show McCabes Pharmacy Finnstown and LloydsPharmacy Woodview's customer locations.⁵⁴

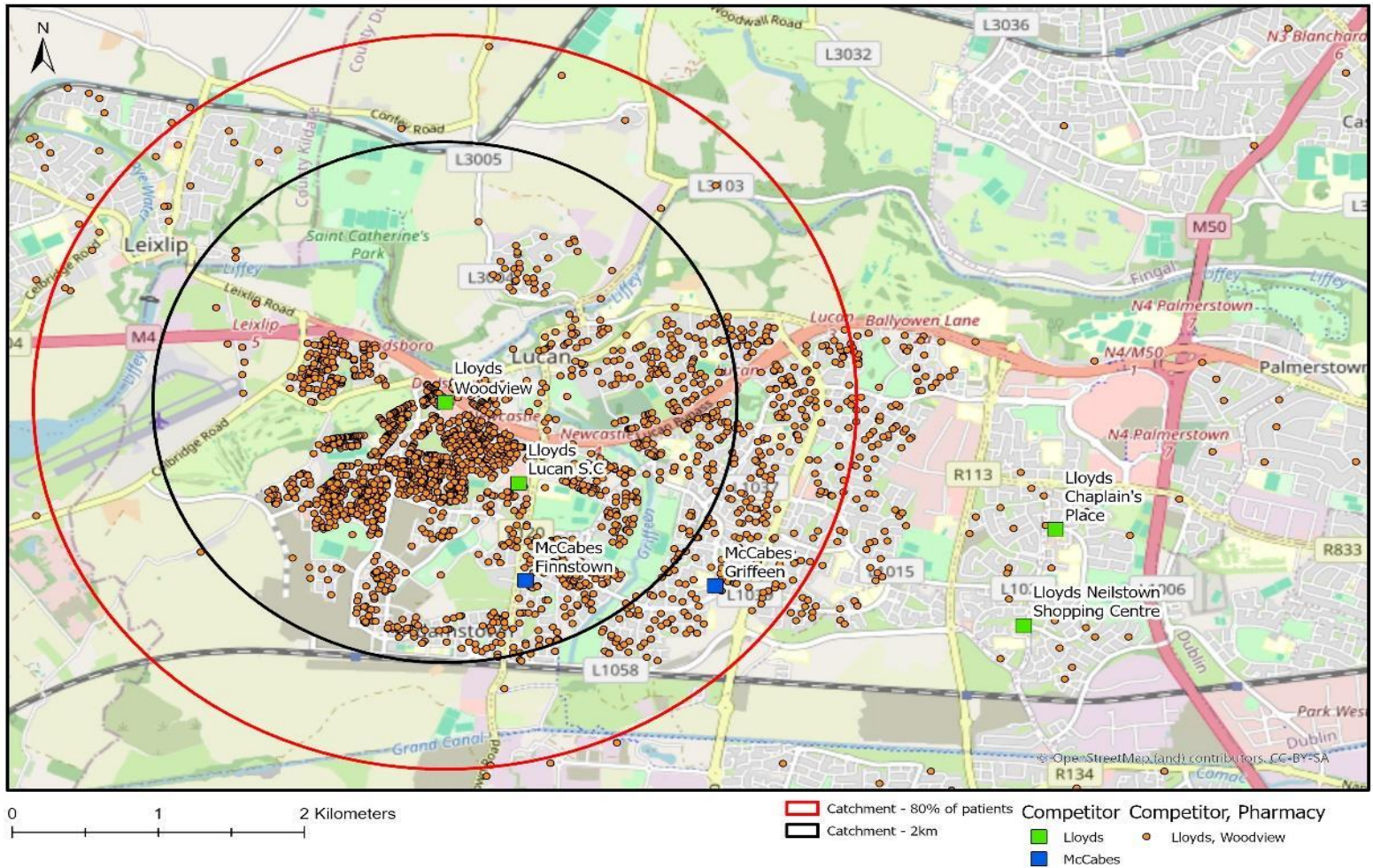
⁵⁴ In each map, the inner ring represents the area within which 80% of each respective pharmacies' customers are located, while the outer ring represents a 2km radius.

Figure 4: McCabes Pharmacy Finnstown customers



Source: RBB Economics Report

Figure 5: LloydsPharmacy Woodview customers



Source: Source: RBB Economics Report

- 5.32 As shown by Figures 4 and 5, McCabes Pharmacy Finnstown draws its customers from the area immediately surrounding its store. LloydsPharmacy Woodview draws a significant portion of its customers from the area directly to the south of its store. While there is some overlap between where both pharmacies draw their customers, each pharmacy's focus is on different areas within Lucan Catchment Area 1.
- 5.33 Based on available information, the Commission considers that it is likely that McCabes Pharmacy Finnstown and LloydsPharmacy Woodview do not exert strong competitive constraints upon one another.

The Commission's view with respect to Lucan Catchment Area 1

- 5.34 Considering the above evidence, the Commission identified potential competition concerns in relation to Lucan Catchment Area 1. These concerns relate to the potential significant loss of competition between LloydsPharmacy Lucan Shopping Centre and McCabes Pharmacy Finnstown.

Proposals submitted by the Parties in relation to Lucan Catchment Area 1

- 5.35 On 24 April 2024, following engagement with the Commission throughout its investigation, PHOENIX submitted the Final Proposals to the Commission in accordance with section 20(3) of the Act for the purpose of ameliorating any effects of the Proposed Transaction on competition in markets for goods or services in the State. The Final Proposals submitted by PHOENIX include a commitment by PHOENIX to divest McCabes Pharmacy's interest, rights, obligation, goodwill, know-how, custom, and connection in respect of the McCabes Pharmacy Finnstown and McCabes Pharmacy Griffeen Centre. The Final Proposals, appended below, describe the divestment package and set out the process for appointing a Monitoring Trustee and selecting a suitable purchaser for the divestment package.

Conclusion in relation to Lucan Catchment Area 1

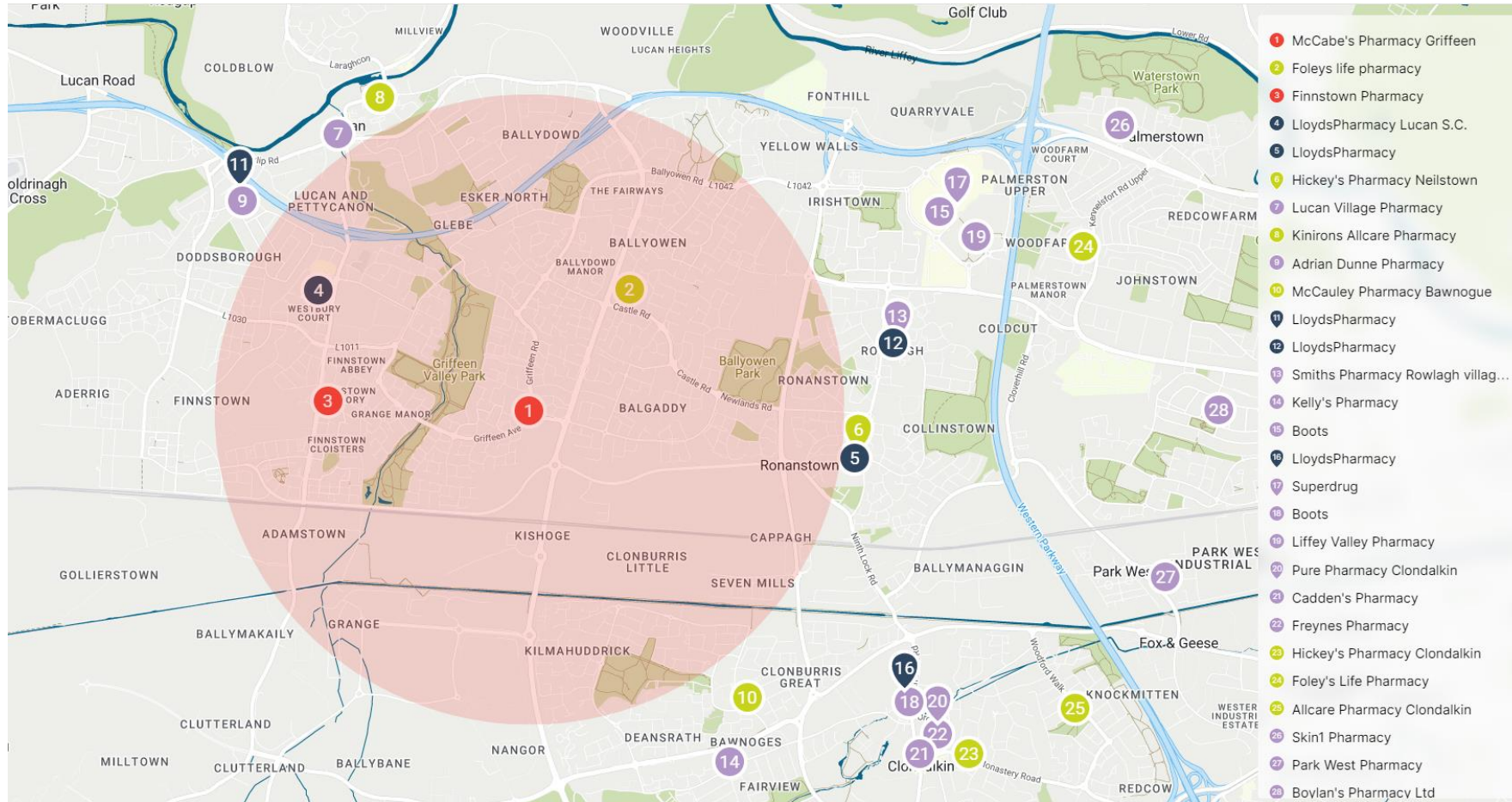
- 5.36 The Commission is of the view that the Final Proposals are sufficient to address the potential competition concerns identified by the Commission in the potential market for the operation of retail pharmacies in Lucan Catchment Area 1.
- 5.37 In light of the Final Proposals, it is not necessary for the Commission to conclude on the potential competitive effects of the Proposed Transaction in relation to Lucan Catchment

Area 1 in the absence of the Final Proposals. The Commission has taken the Final Proposals into account and the Final Proposals form part of the basis of this determination. In accordance with section 20(3) and section 26(1) and section 26(4) of the Act, the Final Proposals have become commitments binding upon the Parties.

Lucan Catchment Area 2

5.38 Figure 6 below shows Lucan Catchment Area 2 and its surrounding areas. Table 7 below lists the retail pharmacies within Lucan Catchment Area 2.

Figure 6: Map of Lucan Catchment Area 2⁵⁵



Source: The Commission

⁵⁵ The shaded red circle is a rough indication of the 2km catchment area. Target Pharmacies are coloured red, LloydsPharmacy retail pharmacies are coloured blue, retail pharmacies of brands related to Uniphar Group plc are coloured green, and other competing retail pharmacies are coloured purple.

Table 7: Retail pharmacies within the Lucan Catchment Area 2

NO.	PHARMACY	LOCATION	DISTANCE TO TARGET
1	McCabes Pharmacy Griffeen	Units 1 & 2, The Griffeen Centre, Lucan, Co Dublin.	N/A
2	Foley's Life Pharmacy	Castle S/C, Ballyowen, Lucan, Co. Dublin.	1km
3	McCabes Finnstown Pharmacy	Unit 4, Finnstown Shopping Centre, Newcastle Road, Lucan, Co. Dublin.	1.3km
4	LloydsPharmacy Lucan S.C.	Unit 4-5, Lucan Shopping Centre, Newcastle Rd, Lucan, Co. Dublin.	1.57km

Source: The Parties

5.39 Figure 6 and Table 7 show that LloydsPharmacy owns one retail pharmacy within Lucan Catchment Area 2, which is located at Unit 4-5, Lucan Shopping Centre, Newcastle Rd, Lucan, Co. Dublin. Following the implementation of the Proposed Transaction, there will be one remaining competitor within Lucan Catchment Area 2.

Closeness of competition

5.40 The Commission has considered the extent to which LloydsPharmacy and McCabes Pharmacy are close competitors in Lucan Catchment Area 2. Specifically, the Commission has assessed the competitive constraints that the following retail pharmacies exert on one another:

- McCabes Pharmacy Griffeen Centre and LloydsPharmacy Lucan Shopping Centre.⁵⁶

⁵⁶ The competitive constraint that LloydsPharmacy Lucan Shopping Centre and McCabes Pharmacy Finnstown exert on one another has been considered within the assessment of Lucan Catchment Area 1 above.

Competitive Constraint: McCabes Pharmacy Griffen Centre – LloydsPharmacy Lucan Shopping Centre

Consumer Survey

5.41 The Consumer Survey asked customers of McCabes Pharmacy Griffen Centre what they would do if the pharmacy was closed for 6 months. 88% of respondents stated they would have switched to another pharmacy. The breakdown of which pharmacy these respondents would have gone to is shown in Table 8 below.

Table 8: Consumer Survey (McCabes Pharmacy Griffen Centre respondents that would go to another pharmacy)

Consumer Survey Response	Percentage
Foley’s Life Pharmacy	27%
LloydsPharmacy Shopping Centre Pharmacy	18%
McCabes Finnstown Pharmacy	11%
Lucan Village Pharmacy	7%
Adrian Dunne Pharmacy	4%
Boots Liffey Valley Pharmacy	4%
Others / Refused	29%
Total	100% ⁵⁷

Source: The Consumer Survey

5.42 The Consumer Survey indicates that LloydsPharmacy Lucan Shopping Centre exerts a competitive constraint on McCabes Pharmacy Griffen Centre; just under 20% of McCabes Pharmacy Griffen’s customers would switch to LloydsPharmacy Lucan Shopping Centre if McCabes Pharmacy Griffen Centre was closed.

5.43 The Consumer Survey also asked customers of LloydsPharmacy Lucan Shopping Centre what they would do if the pharmacy was closed for 6 months. 86% of respondents stated they would have gone to another pharmacy. Of these respondents, 9% stated that they would switch to McCabes Pharmacy Griffen Shopping Centre.

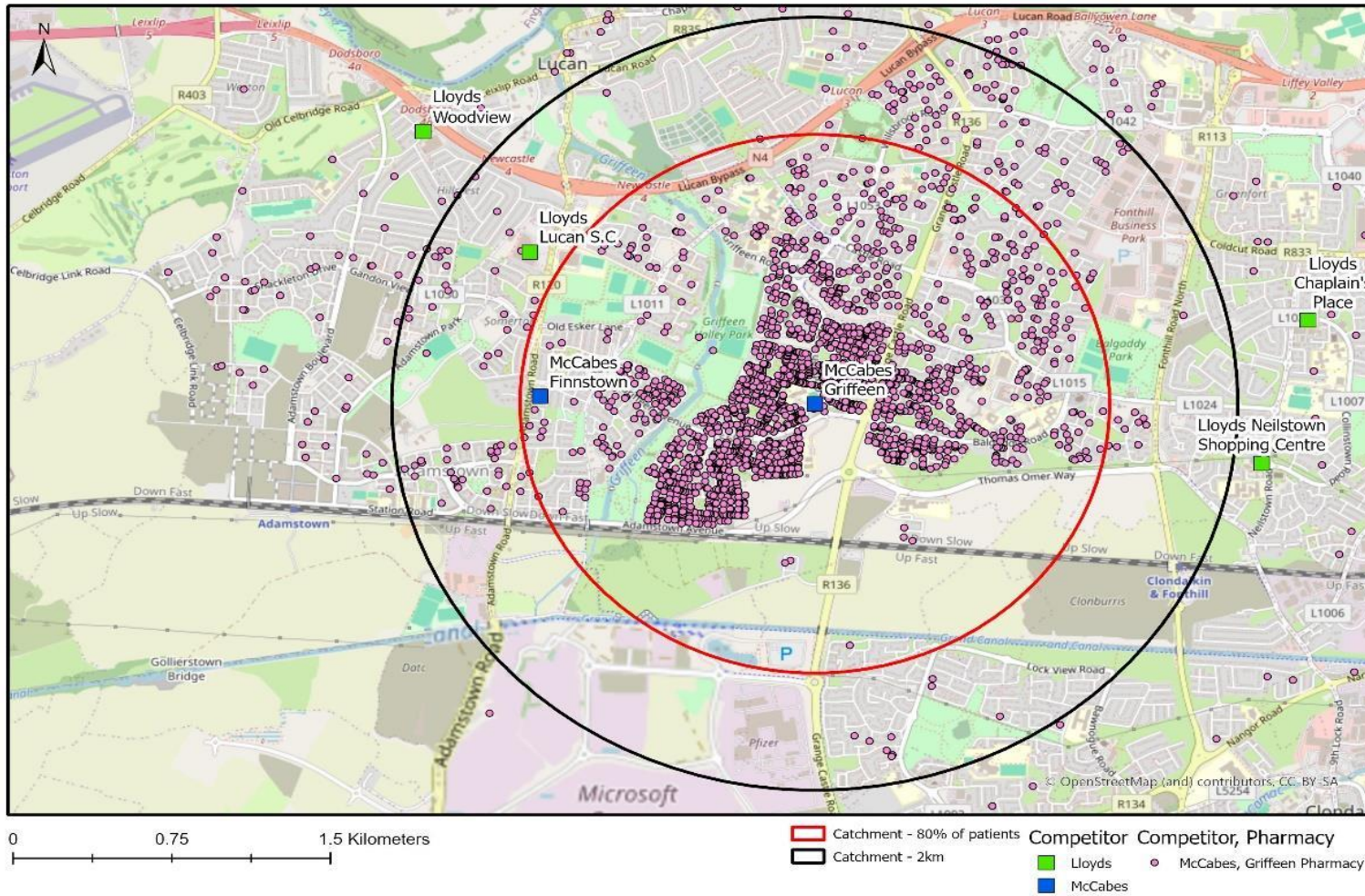
Customer overlaps

5.44 Figures 7 and 18 show the locations of McCabes Pharmacy Griffen Centre and LloydsPharmacy Lucan Shopping Centre’s customers in Lucan Catchment Area 2.⁵⁸

⁵⁷ Percentages have been rounded.

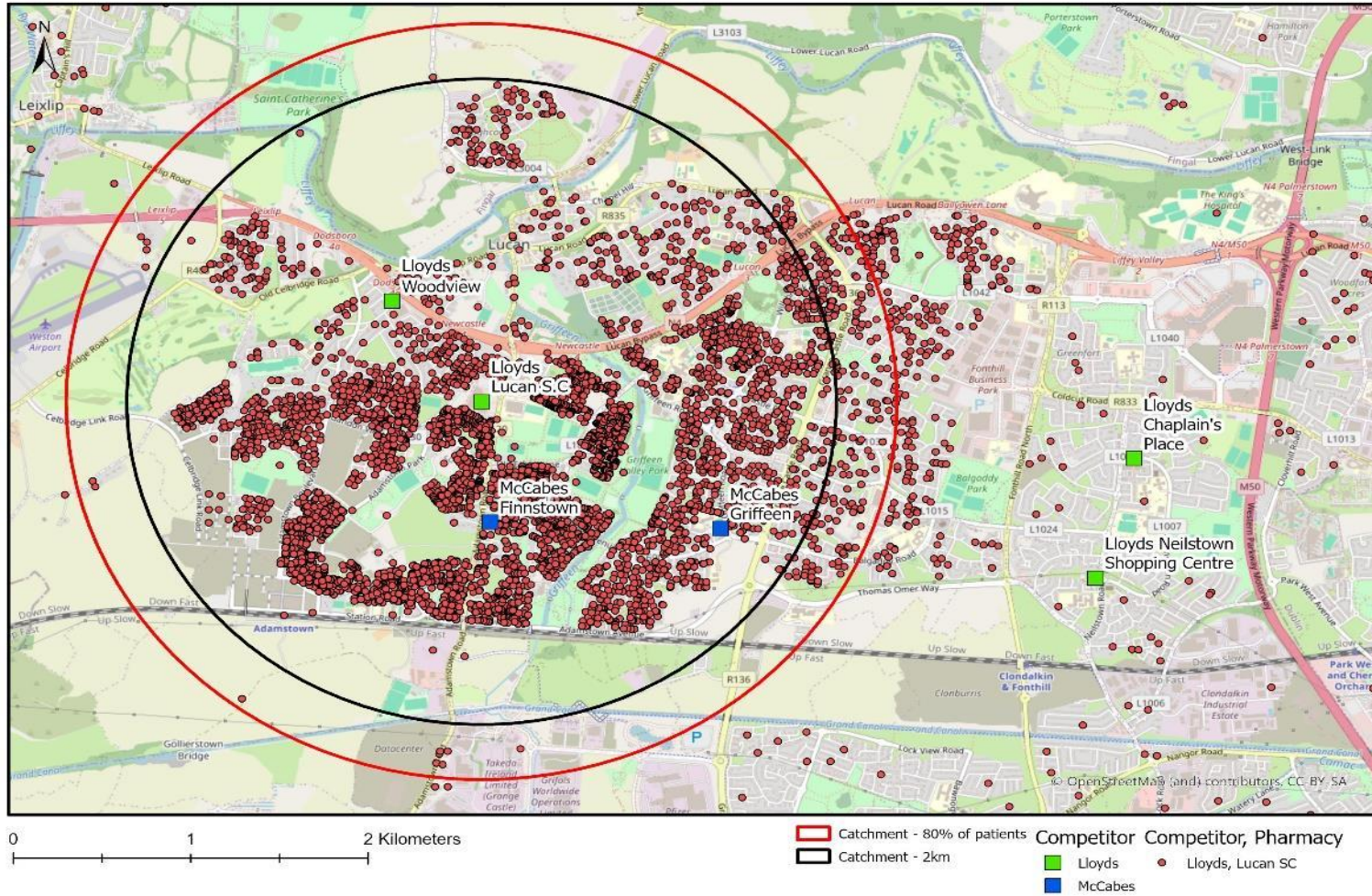
⁵⁸ In each map, the inner ring represents the area within which 80% of each respective pharmacies’ customers are located, while the outer ring represents a 2km radius.

Figure 7: McCabes Pharmacy Griffeen Centre customers



Source: RBB Economics Report

Figure 8: LloydsPharmacy Lucan S.C. customers



Source: RBB Economics Report

- 5.45 As shown by the maps above, McCabes Pharmacy Griffeen Centre draws its customers from the area immediately surrounding its store. LloydsPharmacy Lucan Shopping Centre draws its customers from across Lucan Catchment Area 2, including from the area immediately surrounding McCabes Pharmacy Griffeen Centre.
- 5.46 This indicates that McCabes Pharmacy Griffeen Centre and LloydsPharmacy Lucan Shopping Centre compete for the same customers within Lucan Catchment Area 2, although McCabes Pharmacy Griffeen Centre's focus is within a specific area within Lucan Catchment Area 2. Furthermore, McCabes Pharmacy Finnstown and McCabes Pharmacy Griffeen Centre are the only pharmacies to the south of LloydsPharmacy Lucan Shopping Centre within Lucan Catchment Area 2.
- 5.47 Considering the above evidence, the Commission considers that McCabes Pharmacy Griffeen Centre and LloydsPharmacy Lucan Shopping Centre exert strong competitive constraints upon one another. These constraints would be removed following the implementation of the Proposed Transaction.

Competitive Constraint: McCabes Pharmacy Finnstown – LloydsPharmacy Lucan Shopping Centre

- 5.48 The Commission has considered the competitive constraints McCabes Pharmacy Finnstown and LloydsPharmacy Lucan Shopping Centre exert upon one another within the context of Lucan Catchment Area 1 above. As outlined above, the Commission considers that McCabes Pharmacy Finnstown and LloydsPharmacy Lucan Shopping Centre exert strong competitive constraints on one another. These constraints would be removed following the implementation of the Proposed Transaction.

The Commission's view with respect to Lucan Catchment Area 2

- 5.49 Given the above, the Commission identified potential competition concerns in relation to Lucan Catchment Area 2. These concerns related to the loss of competitive constraints between: (i) LloydsPharmacy Lucan Shopping Centre and McCabes Pharmacy Finnstown; and (ii) LloydsPharmacy Lucan Shopping Centre and McCabes Pharmacy Griffeen Centre.

Proposals submitted by the Parties in relation to Lucan Catchment Area 2

5.50 As noted above, on 24 April 2024, PHOENIX submitted the Final Proposals to the Commission. The Final Proposals submitted by PHOENIX include a commitment by PHOENIX to divest McCabes Pharmacy's interest, rights, obligation, goodwill, know-how, custom, and connection in respect of the McCabes Pharmacy Finnstown and McCabes Pharmacy Griffeen Centre. The Final Proposals, appended below, describe the divestment package and set out the process for appointing a Monitoring Trustee and selecting a suitable purchaser for the divestment package.

Conclusion in relation to Lucan Catchment Area 2

5.51 The Commission is of the view that the Final Proposals are sufficient to address the potential competition concerns identified by the Commission in the potential market for the operation of retail pharmacies in Lucan Catchment Area 2.

5.52 In light of the Final Proposals, it is not necessary for the Commission to conclude on the competitive effects of the Proposed Transaction in relation to Lucan Catchment Area 2 in the absence of the Final Proposals. The Commission has taken the Final Proposals into account and the Final Proposals form part of the basis of this determination. In accordance with section 20(3) and section 26(1) and section 26(4) of the Act, the Final Proposals have become commitments binding upon the Parties.

Overall conclusion on horizontal effects

5.53 For the reasons set out above, and having taken the Final Proposals into account, the Commission considers that the Proposed Transaction does not give rise to horizontal SLC concerns in the State.

6. COMPETITIVE ASSESSMENT COORDINATED EFFECTS

- 6.1 Coordinated effects can occur where a proposed transaction changes the nature of competition in the relevant market by making it more likely that the merged entity and some or all of its competitors will coordinate their behaviour by, for example, raising prices and/or decreasing output. Thus, the key question⁵⁹ is whether a proposed transaction would materially increase the likelihood that firms would successfully coordinate their behaviour or would strengthen existing coordination between firms in this market.
- 6.2 Section 5 sets out that, based on the information in the possession of the Commission, the likely effects of the Proposed Transaction are mainly unilateral in nature. The Proposed Transaction, in itself, has not presented a plausible coordinated effects theory of harm.
- 6.3 On the basis of the information in the possession of the Commission, no plausible coordinated effects theory of harm was identified given the relevant counterfactual. Therefore, no further discussion of coordinated effects is carried out for the purposes of assessing the likely effects of the Proposed Transaction in the identified potential relevant markets.

⁵⁹ See Commission's Merger Guidelines, paragraph 4.23.

7. VERTICAL RELATIONSHIPS

7.1 The Commission has identified the following actual and potential vertical relationships between PHOENIX and McCabes Pharmacy:

- the full-line wholesale supply of POHPPs in the State;
- the provision of buying group services to retail pharmacies in the State;
- the wholesale supply of medical products to retail pharmacies in the State;
and
- the wholesale supply of FOS products and non-pharmacy-only products to retail pharmacies in the State.

The full-line wholesale supply of POHPPs in the State

7.2 As noted above, PHOENIX is active in the full-line wholesale supply of POHPPs in the State through United Drug. United Drug is one of two full-line wholesalers in the State, and currently operates as McCabes Pharmacy's primary full-line wholesaler.

7.3 The Commission considers that the Proposed Transaction does not give rise to vertical foreclosure concerns in relation to the wholesale supply of POHPPs in the State for the following reasons:

- **Input foreclosure:** United Drug estimates that it holds a share of approximately [45-50]% in the potential upstream market for the full-line wholesale supply of POHPPs in the State.⁶⁰ United Drug's estimated market share will not change as a result of the Proposed Transaction. Furthermore, United Drug faces a strong competitor in Uniphar

⁶⁰ Merger Notification Form, table 5.4. Based on IQVIA data.

in respect of the full-line wholesale supply of POHPPs in the State. As noted above at paragraph 5.5, the increase in LloydsPharmacy's estimated share in the downstream operation of retail pharmacies in the State following the implementation of the Proposed Transaction will be minimal ([0-5]%), and the Commission considers that this increase is unlikely to result in United Drug gaining the incentive and ability to engage in input foreclosure. Therefore, the Commission considers that input foreclosure is unlikely to arise in respect of the full-line wholesale supply of POHPPs in the State following the implementation of the Proposed Transaction.

- **Customer foreclosure:** as noted above at paragraph 5.5, the increase resulting from the Proposed Transaction in LloydsPharmacy's estimated share in the downstream operation of retail pharmacies in the State is minimal ([0-5]%). Additionally, United Drug is already McCabes Pharmacy's primary full-line wholesaler. Consequently, the Commission considers that the Proposed Transaction is unlikely to result in United Drug gaining the incentive and ability to engage in customer foreclosure. Therefore, the Commission considers that customer foreclosure is unlikely to arise in respect of the full-line wholesale supply of POHPPs in the State following the implementation of the Proposed Transaction.

The provision of buying group services to retail pharmacies in the State

- 7.4 There is a potential vertical relationship between PHOENIX and McCabes Pharmacy in the provision of buying group services, as United Drug provides buying group services to retail pharmacies.
- 7.5 Buying groups provide their services to independent retail pharmacies. The majority of McCabes Pharmacy's retail pharmacies form part of a retail chain and are not independently

owned. Consequently, the vast majority of McCabes Pharmacy's retail pharmacies do not source buying group services from external providers.⁶¹

7.6 Therefore, the Commission considers that input or customer foreclosure is unlikely to arise in relation to the provision of buying group services to retail pharmacies in the State following the implementation of the Proposed Transaction.

The wholesale supply of medical products to retail pharmacies in the State

7.7 There is a vertical relationship between PHOENIX and McCabes Pharmacy in the wholesale supply of medical products to retail pharmacies in the State. United Drug currently supplies medical products to McCabes Pharmacy.

7.8 The Commission considers that the Proposed Transaction does not give rise to any vertical foreclosure concerns in the State in relation to the wholesale supply of medical products for the following reasons:

- **Input foreclosure:** United Drug estimates that it holds a 5-10% share in the wholesale supply of medical products to retail pharmacies in the State.⁶² United Drug would continue to face a competitive constraint from a range of suppliers, including Fleming Medical Limited (15-20%); Uniphar (15-20%); Pharmacare Distribution Limited ([0-5%]); Allegro Limited ([0-5%]); and Lynch Medical Supplies (LMS) Limited ([0-5%]).⁶³ Therefore, the Commission considers that input foreclosure is unlikely to arise in respect of the wholesale supply of medical products to retail pharmacies in the State following the implementation of the Proposed Transaction.

⁶¹ Merger Notification Form, section 3.3, paragraph 47, states that while the McCabes Group is not a member of a buying group, four subsidiaries, which are recent acquisitions in 2022 and 2023, namely Prima Pharmacies Limited, Stanley's Pharmacy Limited, Ballycullen Pharmacy Limited and Kacare Pharmacy Limited, are part of the Axiom buying group.

⁶² Merger Notification Form, section 5.3.

⁶³ The estimated shares of competitors have been taken from *M/22/049 – Uniphar/LXV Remedies (Sam McCauley)*.

- **Customer foreclosure:** as noted above at paragraph 5.5, the increase resulting from the Proposed Transaction in LloydsPharmacy's estimated share in the downstream operation of retail pharmacies in the State is minimal ([0-5]%), and the Commission therefore considers that the Proposed Transaction is unlikely to result in LloydsPharmacy gaining the incentive and ability to engage in customer foreclosure. Therefore, the Commission considers that customer foreclosure is unlikely to arise in respect of the wholesale supply of medical products to retail pharmacies in the State following the implementation of the Proposed Transaction.

Wholesale Supply of FOS products and Non-Pharmacy-Only Products to Retail Pharmacies

7.9 There is a vertical relationship between PHOENIX and McCabes Pharmacy in the wholesale supply of FOS products and non-pharmacy-only products to retail pharmacies in the State. United Drug currently supplies FOS and non-medical products to McCabes Pharmacy.

7.10 The Commission considers that the Proposed Transaction does not give rise to any vertical foreclosure concerns in the State in relation to the wholesale supply of FOS products and non-pharmacy-only products for the following reasons:

- **Input foreclosure:** United Drug estimates that it holds a 15-20% share in the wholesale supply of FOS products and non-pharmacy-only products to retail pharmacies in the State.⁶⁴ United Drug will continue to face a competitive constraint from a range of other suppliers, including Uniphar ([15-20]%), Cosmetics Active ([5-10]%), Allegro Limited ([5-10]%), L'Oreal Ireland Limited ([5-10]%), Parle and Hickey ([0-5]%) and Sundrelle Limited ([0-5]).⁶⁵ Therefore, the Commission considers that input

⁶⁴ Merger Notification Form, section 5.3.

⁶⁵ The estimated shares of competitors have been taken from *M/22/049 – Uniphar/LXV Remedies (Sam McCauley)*.

foreclosure is unlikely to arise in respect of the wholesale supply of FOS products and non-pharmacy-only products to retail pharmacies in the State.

- **Customer foreclosure:** as noted above at paragraph 5.5, the increase resulting from the Proposed Transaction in LloydsPharmacy's estimated share in the downstream operation of retail pharmacies in the State is minimal ([0-5]%), and the Commission therefore considers that the Proposed Transaction is unlikely to result in LloydsPharmacy gaining the incentive and ability to engage in customer foreclosure. Therefore, the Commission considers that customer foreclosure is unlikely to arise in respect of the wholesale supply of FOS products and non-pharmacy-only products to retail pharmacies in the State following the implementation of the Proposed Transaction.

Conclusion on Vertical Relationships

7.11 In light of the above, the Commission considers that the Proposed Transaction does not raise vertical competition concerns in the State.

8. ANCILLARY RESTRAINTS

- 8.1 The Parties state that Clauses 13.2.1 and 13.2.4 of the SPAs contain restrictions that are directly related and necessary to the implementation of the Proposed Transaction.
- 8.2 The Commission notes that Clause 13.2.1 and 13.2.4 of the SPAs impose non-compete and non-solicitation restrictions on the Covenantors.⁶⁶ The Commission considers that the duration and scope of these obligations do not exceed the maximum duration and scope acceptable to the Commission.⁶⁷ The Commission therefore considers the restrictions contained in Clauses 13.2.1 and 13.2.4 of the SPAs to be directly related and necessary to the implementation of the Proposed Transaction, insofar as they relate to the State.

⁶⁶ [REDACTED]

⁶⁷ In this respect, the Commission follows the approach adopted by the European Commission in paragraph 20 of its “Commission Notice on restrictions directly related and necessary to concentrations [(2005) OJ C56/03. For more information, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005XC0305%2802%29>.”

9. DETERMINATION

Pursuant to section 20(3) of the Competition Act 2002, as amended (the “Act”), PHOENIX Pharma SE (“PHOENIX”) has submitted to the Competition and Consumer Protection Commission (“the Commission”) the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed acquisition on competition in markets for goods or services in the State, with a view to said proposals becoming binding on PHOENIX.

The Commission has taken the proposals into account and, in light of the proposals (which form part of the basis of its determination), has determined, in accordance with section 22(3)(a) of the Act, that the result of the proposed acquisition whereby LloydsPharmacy Ireland Limited, indirectly owned and solely controlled by PHOENIX, would acquire sole control of Drummullan Unlimited Company, Arundina Holdings Limited and Calathea Holdings Limited, together trading as McCabes Pharmacy, will not be to substantially lessen competition in any market for goods and services in the State, and, accordingly, that the acquisition may be put into effect. Before making a determination in this matter, the Commission, in accordance with section 22(8) of the Act, had regard to any relevant international obligations of the State, and concluded that there were none.

For the Competition and Consumer Protection Commission.

Brian McHugh

Chairperson

Competition and Consumer Protection Commission

ANNEX A: PROPOSALS

Case M/24/011 - LloydsPharmacy/McCabes Pharmacy

Proposals by PHOENIX Pharma SE to the Competition and Consumer Protection Commission relating to the proposed acquisition of Drummullan Unlimited Company, Arundina Holdings Limited and Calathea Holdings Limited by LloydsPharmacy Ireland Limited ("the Proposals")

Submitted on 24 April 2024

I. RECITALS

- 1.1 On 16 February 2024, the Competition and Consumer Protection Commission (the "CCPC") received a notification of a proposed acquisition, whereby LloydsPharmacy Ireland Limited, a wholly owned indirect subsidiary of PHOENIX Pharma SE, would acquire sole control of Drummullan Unlimited Company, Arundina Holdings Limited and Calathea Holdings Limited (T/A McCabes Group).
- 1.2 During a call with the case team on 15 March 2024, the CCPC indicated that it had preliminary concerns in relation to the local catchment areas of two McCabes' Group pharmacies located in the Lucan area of Dublin and that the CCPC was continuing to assess the Proposed Transaction with respect to those local catchment areas.
- 1.3 On 24 April 2024, PHOENIX submitted the Proposals pursuant to Section 20(3) of the Competition Act 2002 (as amended), for the purpose of ameliorating any effects of the Proposed Transaction on competition in markets for goods or services in the State and with a view to alleviating concerns identified by the CCPC and the Proposals becoming binding on PHOENIX if the CCPC takes the Proposals into account and states in writing that the Proposals form the basis or part of the basis of a Determination.

2. DEFINITIONS

- 2.1 For the purpose of these Proposals, the following terms shall have the following meaning:

"Act" means the Competition Act 2002 (as amended);

"Assets" shall be construed in accordance with the Schedule to the Proposals hereto;

"Businesses" means, all together or in any grouping, the Finnstown Business and the Griffeen Business (and each individually is a "Business");

"CCPC" means the Competition and Consumer Protection Commission and its successors;

"CCPC Trustee" has the meaning ascribed to it in paragraph 5.4 of the Proposals;

"Determination" means the Determination of the CCPC pursuant to Section 22(3)(a) of the Act that the Proposed Transaction may be put into effect, taking into account the Proposals, which form part of the basis of the Determination;

"Divestment Period" has the meaning ascribed to it in paragraph 3.2 of the Proposals;

"Existing Supplier" means any of the suppliers of a Business the day prior to the date of the Determination;

"Finnstown Business" means the Target's interest, rights and obligations in respect of the McCabes Pharmacy business, carried on by McCabes Finnstown, and currently trading at Unit 4, Finnstown Shopping Centre, Newcastle Road, Lucan, Co. Dublin,

K78 E0F8 (i.e., the operation of a retail/community pharmacy at that premises) and carried on by Kacare Pharmacy Limited (company registration no. 376164), which has its registered offices at Unit 6, The Roof Garden, Clarehall Shopping Centre, Malahide Road, Dublin 17, which is to be sold by PHOENIX by way of a share sale under the terms of the Proposals;

"**Griffeen Business**" shall be construed in accordance with the Schedule to the Proposals hereto;

"**Hold Separate Manager**" has the meaning ascribed to it in paragraph 8.4 of the Proposals;

"**Mandate**" means the mandate agreement to be entered into between PHOENIX and the Trustee in accordance with paragraph 6.1 of the Proposals, the terms of which shall have been agreed with the CCPC;

"**Material Change**" means a change whereby a purchaser no longer fulfils the requirements of a "Suitable Purchaser", as defined below;

"**New Trustee**" has the meaning ascribed to it in paragraph 5.2 of the Proposals;

"**PHOENIX**" means PHOENIX Pharma SE, a company incorporated in Germany, which has its registered address at PfingstweidstraBe 10-12, 68199 Mannheim, together with all its subsidiaries, representatives, franchisees and agents and all the undertakings • they control either directly or indirectly, solely or jointly from time to time. For the purposes of this definition, "control" and its variants have the meaning ascribed by section 16(2) of the Act;

"**Proposed Transaction**" means the proposed acquisition whereby LloydsPharmacy Ireland Limited, a wholly owned indirect subsidiary of PHOENIX, would acquire sole control of Drummullan Unlimited Company, Arundina Holdings Limited and Calathea Holdings Limited (TIA McCabes Group);

"**Proposed Trustee**" has the meaning ascribed to it in paragraph 5.1 of the Proposals;

"**Suitable Purchaser**" means a purchaser who meets all of the following criteria:

- (a) the acquisition by the purchaser of a Business or Businesses would not be likely to create *prima facie* competition concerns;
- (b) the acquisition by the purchaser of a Business or Businesses would be on terms and conditions which would not be likely to create *prima facie* competition concerns;
- (c) the purchaser is unconnected to, and independent of, both PHOENIX and the Target;
- (d) the purchaser is able to continue to operate a Business or Businesses on a financially viable basis; and
- (e) the purchaser is committed to operating a Business or Businesses as an active competitive force.

"**Target**" means (i) Drummullan Unlimited Company, (Registration No. 148220), which has its registered offices at The Roof Gardens, Clarehall Shopping Centre, Malahide Road, Dublin 17, Dublin; (ii) Arundina Holdings Limited (Registration No. 606984), which has its registered offices at Unit 2, 2 Yellow Walls Road Malahide Co. Dublin; and (iii) Calathea Holdings Limited (Registration No. 606535), which has its registered offices at Unit 3-4, Malahide Shopping Centre Co. Dublin, together trading as "McCabes Group" and all their subsidiaries' representatives, franchisees and agents

and all the undertakings they control either directly or indirectly, solely or jointly from time to time. For the purposes of this definition, "control" and its variants have the meaning ascribed by Section 16(2) of the Act;

"Trustee" means the trustee approved, or deemed to have been approved, by the CCPC with whom PHOENIX shall enter into the Mandate in accordance with paragraph 6.1 of the Proposals;

"Trustee Reports" has the meaning ascribed to it in paragraph 6.4(a) of the Proposals.

3. PROPOSAL TO DIVEST THE BUSINESSES

- 3.1 Pursuant to section 20(3) of the Act, PHOENIX submits to the CCPC the following Proposals relating to the Businesses for the purpose of ameliorating any potential effects of the Proposed Transaction on competition in markets for goods or services in the State, with a view to the Proposals becoming binding on PHOENIX on the date of the Determination.
- 3.2 PHOENIX undertakes, subject to the provisions set out herein, to effect the sale of each of the Businesses within 8 (eight) months of the date of the Determination (the "**Divestment Period**") (or such longer period as may be allowed by the CCPC, acting reasonably) to a Suitable Purchaser approved by the CCPC (which approval shall not be unreasonably withheld or delayed by the CCPC). For the purpose of the Proposals, any reference to a sale, disposal or transfer by PHOENIX of the Businesses (or similar expressions) shall be deemed to include a sale, disposal or transfer by PHOENIX of the entire issued share capital of the Finnstown Business and/or the asset sale by PHOENIX of the Griffeen Business in accordance with the terms of the Proposals, including the Schedule to the Proposal. For the avoidance of doubt, the Businesses may be sold individually or as a pair.
- 3.3 PHOENIX recognises that the sale of the Businesses shall be upon such conditions as detailed in the Proposals and that the acquisition of a Business or Businesses by a prospective purchaser must not be likely to create, in light of information available to the CCPC, *prima facie* competition concerns.
- 3.4 PHOENIX recognises that for a prospective purchaser to meet with the CCPC's approval, such purchaser shall be unconnected to and independent of PHOENIX and shall be a Suitable Purchaser.
- 3.5 PHOENIX further recognises that for a prospective purchaser to meet with the CCPC's approval, that purchaser must be deemed reasonably likely to obtain all authorisations and consents required to effect a transfer of the Business(es) that that purchaser proposes to purchase.
- 3.6 PHOENIX shall:
 - (a) promptly inform the Trustee and the CCPC in writing, with a fully documented and reasoned proposal (together with all supporting documentation, including a copy of any heads of agreement or draft contracts prepared by PHOENIX or the prospective purchaser), of any prospective purchaser who indicates a genuine interest/serious desire to purchase a Business and to whom PHOENIX is considering the sale of that Business, enabling the Trustee and the CCPC to verify the suitability of the prospective purchaser; and
 - (b) when it has entered into a binding contract for the sale of a Business provide a fully documented and reasoned submission (including any relevant updates

regarding the purchaser) to the Trustee and the CCPC enabling the Trustee and the CCPC to verify that the conditions and obligations laid down in the Proposals are fulfilled and that there has been no material change in the status of the purchaser (that is, the "**Material Change**" as defined in paragraph 2.1 above) not reasonably foreseeable at the time the CCPC assessed the purchaser's suitability under paragraph 3.6(a) subject to the CCPC agreeing to keep confidential all such information received.

- 3.7 The CCPC shall communicate in writing its approval or non-approval of a prospective purchaser of a Business within ten (10) working days of receipt of a fully documented and reasoned proposal (together with all supporting documentation, including a copy of any heads of agreement or draft contracts prepared by PHOENIX or the prospective purchaser) identifying a prospective purchaser in accordance with paragraph 3.6(a) above. Separately, within ten (10) working days of receipt of a binding contract for sale and all supporting documentation in accordance with paragraph 8.6 or paragraph 8.7 (as the case may be), as well as the fully documented and reasoned submission in accordance with paragraph 3.6(b), the CCPC shall communicate in writing its view as to whether the conditions laid down in the Proposals have been fulfilled and as to whether there has been any Material Change in the status of the purchaser as provided for in paragraph 3.6(b).
- 3.8 Failure of the CCPC to communicate its approval or non-approval of a prospective purchaser within ten (10) working days of receipt of a fully documented and reasoned proposal identifying such a purchaser in accordance with paragraph 3.6(a) shall delay the running or expiration of the eight (8) month period established above until the CCPC communicates its approval or non-approval. However, if the CCPC does not communicate its approval or non-approval within twenty (20) working days of receipt as aforesaid, such approval shall be deemed to have been given unconditionally. In the case of multiple offers from prospective purchasers each of whom the CCPC considers suitable, PHOENIX shall be free to accept the offer of any of these prospective purchasers of its choosing.
- 3.9 PHOENIX recognises that, if at any time prior to the completion of the sale of the Businesses to a Suitable Purchaser(s), the CCPC reasonably considers on the basis of the information available to it that there has been a Material Change, the CCPC may withdraw its approval of the Suitable Purchaser(s) of the Business.
- 3.10 PHOENIX shall be deemed to have satisfied the terms of the Proposals immediately following the completion of the sale of the Businesses and all obligations under the Proposals shall cease at that time with the exception of the obligations set out in paragraph 4.4, which will continue to have effect for the period specified therein.
- 3.11 The CCPC and PHOENIX shall act at all times in a reasonable manner with a view to achieving the effective and efficient implementation of the Proposals.

4. THE BUSINESSES TO BE DIVESTED

- 4.1 PHOENIX undertakes to dispose of the entirety of the Businesses, to include all tangible and non-tangible assets, licences and contracts. For the avoidance of doubt, this will not include any intellectual property, copyright or trademark held by the Target, even where those assets solely and exclusively refer to a Business.
- 4.2 PHOENIX undertakes to sell each of the Businesses as a going concern, including, where necessary, a transfer of all relevant staff subject to all applicable employment laws.

- 4.3 PHOENIX undertakes not to carry out any act upon its own authority which may reasonably be expected to have a significant adverse impact on the economic value, the management, or the competitiveness of the Businesses until the date of the completion of the sale of the Businesses to a Suitable Purchaser or Suitable Purchasers.
- 4.4 PHOENIX undertakes not to purchase either of the Businesses (or otherwise to acquire an interest in either of the Businesses) for a period of ten (10) years following the date(s) of completion of the sale of the Businesses to a Suitable Purchaser pursuant to the Proposals. If PHOENIX enters into a binding agreement to acquire any of the Businesses after the expiry of the ten (10) year period referred to in this paragraph, PHOENIX shall submit a written notification of such agreement to the CCPC within five (5) working days of the signing of such agreement and will, if required to do so by the CCPC, notify any such proposed acquisition in accordance with Section 18(3) of the Act (or its successor provision, if applicable) if such proposed acquisition is not required to be notified under Section 18(1) of the Act (or its successor provision, if applicable).

5. APPOINTMENT OF A TRUSTEE

- 5.1 Within ten (10) working days of the date of the Determination, PHOENIX will submit to the CCPC a reasoned proposal for a trustee, who is independent of both PHOENIX and the Target (the "**Proposed Trustee**"). The appointment of the Proposed Trustee is subject to the approval of the CCPC. If the CCPC does not reject the Proposed Trustee by notice in writing within five (5) working days of the date of submission of the reasoned submission, the Proposed Trustee shall be deemed to have been approved.
- 5.2 If the Proposed Trustee is rejected, PHOENIX will submit to the CCPC a reasoned proposal for a new trustee (the "**New Trustee**") within ten (10) working days of being informed of the rejection. If the CCPC does not reject the New Trustee by notice in writing to PHOENIX within five (5) working days of the new proposal, the New Trustee shall be deemed to have been approved.
- 5.3 At the time of proposing the Proposed Trustee or the New Trustee to the CCPC, PHOENIX shall furnish to the CCPC sufficient information to enable the CCPC to assess the suitability of the person so proposed, including (without limitation) a curriculum vitae.
- 5.4 If the New Trustee, proposed under paragraph 5.2, is rejected by the CCPC, the CCPC shall, acting reasonably, nominate a suitable trustee (the "**CCPC Trustee**") which PHOENIX will appoint or cause to be appointed.

6. TRUSTEE'S MANDATE

- 6.1 Within ten (10) working days of the date on which the CCPC has approved or is deemed to have approved either the Proposed Trustee, the New Trustee or the CCPC Trustee ("**Trustee**"), PHOENIX shall enter into a mandate agreement (that is, the "**Mandate**" as defined in paragraph 2.1 above) with the Trustee the terms of which have been agreed with the CCPC, which confers on the Trustee all the rights and powers necessary to permit the Trustee to monitor PHOENIX's compliance with the terms of the Proposals.
- 6.2 Within five (5) working days of the date on which the CCPC has approved or is deemed to have approved either the Proposed Trustee, the New Trustee or the CCPC Trustee, PHOENIX shall submit to the CCPC a draft mandate agreement for approval by CCPC, which shall not be unreasonably withheld. The terms of the draft mandate agreement shall be consistent with the terms of the Proposals. If the CCPC rejects the terms of the

draft mandate agreement by notice in writing, the CCPC shall within five (5) working days thereof, propose an amended version of the draft mandate agreement, which shall be accepted by PHOENIX.

- 6.3 The Trustee shall be independent of PHOENIX and the Target, possess the necessary qualifications and experience to carry out its mandate, and shall neither have nor become exposed to a conflict of interest. The Mandate shall provide for a mechanism to resolve any conflicts of interest that may arise during the term of the Mandate (including, if necessary, the replacement of the Trustee).
- 6.4 Throughout the duration of the Trustee's appointment, the Trustee shall:
- (a) provide written reports ("**Trustee Reports**") to the CCPC on the progress of the discharge of its duties under the Mandate, identifying any respects in which the Trustee has been unable to discharge such duties. The Trustee Reports shall be provided at monthly intervals, commencing one month after the date of the appointment of the Trustee, or at such other times or time periods as the CCPC may specify and are notified in writing to PHOENIX. PHOENIX shall receive a non-confidential copy of such Trustee Reports;
 - (b) monitor and advise the CCPC as to the development of the procedure for selecting a purchaser for each of the Businesses and as to the conduct of the negotiations;
 - (c) monitor and advise the CCPC as to whether the prospective purchaser(s) with whom PHOENIX intends to negotiate are likely to satisfy the CCPC's requirements as to suitability including providing a written report to the CCPC within five (5) working days of receipt of a fully documented and reasoned proposal from PHOENIX, pursuant to clause 3.6(a) of these Proposals, verifying the suitability of a prospective purchaser or purchasers;
 - (d) provide a written report to the CCPC within five (5) working days of receipt of a fully documented and reasoned submission from PHOENIX, pursuant to clause 3.6(b) of these Proposals, verifying whether the requirements set out in these Proposals have been fulfilled and that there has been no Material Change;
 - (e) monitor the maintenance of the viability and marketability of the Businesses and ensure that they are managed in the ordinary course of business, pursuant to good business practice; and
 - (f) provide such other ad hoc updates to the CCPC as the Trustee considers necessary.
- 6.5 The Trustee Report shall assess the compliance or otherwise of PHOENIX with the Proposals during the period since the date of the previous Trustee Report (or, in the case of the first Trustee Report, since the date of the Determination).
- 6.6 The Trustee's duties and functions as set out above shall not be extended or varied in any way by PHOENIX, save with the express consent of the CCPC. Any instruction or request to the Trustee from PHOENIX which conflicts with the terms of the Mandate, and the duties and functions as set out above, will be considered null and void.
- 6.7 The CCPC may, on its own initiative or at the request of the Trustee, give any orders or instructions to the Trustee that are required in order to ensure compliance with the conditions and obligations attached to the Determination so long as PHOENIX is first given an opportunity to comment on any such orders or instructions in advance.

- 6.8 After eight (8) months have elapsed from the date of the Determination (or such longer period as may be allowed by the CCPC, acting reasonably), without **PHOENIX** having entered into a binding contract for the disposal of the Businesses to a Suitable Purchaser(s), the Trustee shall be given an irrevocable mandate to negotiate (in good faith) and conclude arrangements for the sale of the Businesses and upon such terms and conditions and for such consideration as the Trustee, in its sole discretion, considers appropriate for an expedient sale, to a viable and independent third party (subject to both the CCPC having approved the purchaser(s) as a Suitable Purchaser and, following entry into a binding contract(s) for the sale of the Businesses, the CCPC having verified that there has been no Material Change in the status of the purchaser, in accordance with paragraphs 3.6, 3.7 and 3.8. For the avoidance of doubt, **PHOENIX** shall not be obliged to remunerate the relevant purchaser(s) in order to ensure the sale of the Businesses. In this context, all references in paragraphs 3.6, 3.7 and 3.8 to "**PHOENIX**" shall be substituted with "the Trustee". The Trustee shall, however, have regard to the legitimate financial interests of **PHOENIX** in respect of any such sale, subject to **PHOENIX**'s unconditional obligation to divest the Businesses at no minimum price.
- 6.9 The CCPC and **PHOENIX** shall endeavour to ensure that the Trustee shall act reasonably and responsibly.

7. MISCELLANEOUS

- 7.1 **PHOENIX** will provide the Trustee with all reasonable assistance and will procure (so far as it is able) that all relevant third parties provide such assistance required to ensure compliance with the Proposals. **PHOENIX** will provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant documents accessible to **PHOENIX** as the Trustee may require in carrying out the Mandate, and will pay reasonable remuneration for the Trustee's services.
- 7.2 In addition, at the expense of **PHOENIX**, the Trustee may appoint advisors (in particular for corporate finance and/or legal advice). The appointment by the Trustees of advisors is subject to **PHOENIX**'s approval, such approval not to be unreasonably withheld or delayed, if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should **PHOENIX** refuse to approve the advisors proposed by the Trustee, the CCPC may approve the appointment of such advisors instead, after first having received **PHOENIX**'s views in writing. Only the Trustee shall be entitled to issue instructions to the advisors.
- 7.3 Notwithstanding the Trustee's overall responsibility to discharge its functions and, in particular, notwithstanding the Trustee's position as an independent unrelated third party, the Trustee (who shall undertake in the Mandate to do so) shall have, to the extent possible given the nature of its tasks, due regard to the commercial interests of **PHOENIX**. The Trustee shall have access on an unrestricted, working basis to the Hold Separate Manager(s) (as defined below), and any other employees of the Businesses in order to ensure compliance by **PHOENIX** with the (i) Proposals and (ii) its obligations to maintain the financial and competitive viability of the Businesses.
- 7.4 The Trustee shall have full and complete access to the Hold Separate Manager(s) and any other employees of the Businesses, in order to ensure compliance by **PHOENIX** with its obligation to maintain the financial and competitive viability of the Businesses.

- 7.5 The Mandate shall be deemed to be discharged and the Trustee's appointment shall be deemed to be terminated if PHOENIX announces that the Proposed Transaction has been irrevocably abandoned.

8. **INTERIM POSITION OF THE BUSINESSES**

- 8.1 Following the Determination and pending the onward sale of the Businesses, PHOENIX undertakes to hold separate the Businesses and to preserve the economic viability, marketability, and competitiveness of the Businesses until the date of completion of the sale of the Businesses in accordance with good commercial practice, and to ensure that the Businesses are managed separately by the Hold Separate Manager(s) (as defined at paragraph 8.4) as of completion of the Proposed Transaction in the best interests of each Business as a distinct economic entity.
- 8.2 PHOENIX shall implement verifiable measures to ensure that it does not obtain any competitively sensitive information relating to each of the Businesses during the period from the date of the Determination until the date of the sale of the relevant Business save, by agreement with the Trustee under the terms of the Mandate, where such information is required:
- (a) for the operation of the Businesses in accordance with good commercial practice;
 - (b) to enable compliance with legal or regulatory obligations by PHOENIX and/or the Business;
 - (c) for the purpose of assisting the divestiture by PHOENIX of the Businesses to a prospective purchaser.

In this regard, it is recognised that engagement will be required by the Trustee with PHOENIX on operational issues that are specific, limited and not competitively sensitive in order to preserve the economic value of the Businesses.

- 8.3 Following the Determination and pending the sale of the Businesses, PHOENIX undertakes not to carry out any act upon its own authority which may reasonably be expected to have a significant adverse impact on the economic value, the management, or the competitiveness of any of the Businesses until the date of its disposal. Furthermore, PHOENIX undertakes not to carry out upon its own authority any act which may be of such a nature as to alter the nature or the scope of activity, or the industrial or commercial strategy, or the investment policy of any of the Businesses. In particular, PHOENIX shall procure and ensure that the Businesses continue to engage with the Existing Suppliers to the Businesses in good faith, and to terminate contracts, whether written or unwritten, with Existing Suppliers only for material breach of contract.
- 8.4 PHOENIX further undertakes to appoint a manager for each or all or any combination of the Businesses (who may be the existing store manager of a Business or such similar person, who is unconnected to, and independent of, PHOENIX) who shall be responsible for the day-to-day management of all operations in relation to that Business or Businesses (the "**Hold Separate Manager(s)**").
- 8.5 The Hold Separate Manager(s) shall manage each Business independently of PHOENIX and in the best interest of each Business with a view to ensuring its continued economic viability, marketability, and competitiveness. Further, subject to the provisions of paragraph 8.2, the Hold Separate Manager(s) shall be responsible for ensuring that no competitively sensitive information relating to each Business and its

operation is provided to PHOENIX during the period from the date of the Determination until the date of completion of the sale of the Business managed by the relevant Hold Separate Manager(s), save with the agreement of the Trustee under the terms of the Mandate and where one of the following conditions is satisfied:

- (a) such information is necessary to ensure the efficient transfer of the retail/community pharmacies forming part of the Target to PHOENIX, and the continued operation of the Target (including either of the Businesses) throughout this period (during which the parties will work together to ensure that the transition has been successful);
 - (b) such information is required for the operation of the Businesses in accordance with good commercial practice;
 - (c) such information is required to enable compliance with legal or regulatory obligations by PHOENIX; and/or the Businesses;
 - (d) such information is required for the purpose of assisting the divesture by PHOENIX of the Businesses to a prospective purchaser.
- 8.6 Where PHOENIX has signed a binding contract for the sale of one or both of the Businesses, it shall provide a copy of the binding contract and all supporting documentation (including a copy of any heads of agreement or draft contracts prepared by PHOENIX or the prospective purchaser) to the Trustee and the CCPC within three (3) working days of PHOENIX's signing of the binding contract.
- 8.7 Where the Trustee has signed a binding contract for the sale of one or both of the Businesses, it shall provide a copy of the binding contract and all supporting documentation (including a copy of any heads of agreement or draft contracts prepared by PHOENIX or the prospective purchaser) to the CCPC within three (3) working days of PHOENIX's signing of the binding contract.

9. REVIEW CLAUSE

- 9.1 The CCPC may at its sole discretion, acting reasonably, extend any of the time periods provided for in the Proposals in response to a reasoned request from PHOENIX or the Trustee or, in appropriate cases, on its own initiative.
- 9.2 The CCPC may further, at its sole discretion waive, modify or substitute any provision in the Proposals in response to a reasoned request from PHOENIX or the Trustee showing good cause or in appropriate cases and following consultation with PHOENIX, on its own initiative acting reasonably (albeit that the CCPC cannot shorten the Divestment Period, as defined in paragraph 3.2 of the Proposals).

Dated 24 April 2024

Signed for and on behalf of **PHOENIX Pharma SE**



Dr. Carsten Sauerland, Member of the Executive Board

Signed for and on behalf of **PHOENIX Pharma SE**



Stephen Anderson, Member of the Executive Board

SCHEDULE TO THE PROPOSALS

1. The businesses to be divested by PHOENIX pursuant to the Proposals consist of the Finnstown Business as defined in paragraph 2.1 of the Proposals and the Griffeen Business as defined in this Schedule to the Proposals.
2. The "**Griffeen Business**" means the Target's interest, rights, obligations, goodwill, know-how, custom and connection in respect of the McCabes Pharmacy business currently trading at Unit 2, The Griffeen Centre, Griffeen Road, Lucan, Co Dublin, K78 R6P4 (i.e., the operation of a retail/community pharmacy at that premises) and carried on by Wembar Company Unlimited Company ("**Wembar Company**") (company registration no. 117451), which has its registered offices at Unit 6, The Roof Garden, Clarehall Shopping Centre, Malahide Road, Dublin 17. The Griffeen Business is to be sold by PHOENIX by way of an asset sale under the terms of the Proposals and the Schedule to the Proposals.
3. The Griffeen Business consists of the following assets which are maintained by Wembar Company at the date of the Determination (together, the "**Assets**"):
 - (a) All assets, including fixtures and fittings, plant, machinery, equipment, tools, furniture and other tangible assets, (excluding any which are attached to the leasehold property which are the property of the landlord under the lease) attached or not (as the case may be) to the property and owned or used by Wembar Company in relation to the Griffeen Business;
 - (b) All liabilities, including all debts, liabilities and obligations of any nature relating to the Griffeen Business or the Assets, whether actual or contingent, which are due or outstanding on or have accrued;
 - (c) Goodwill, know-how, custom and connection in relation to the Griffeen Business, together with the exclusive right to carry on the Griffeen Business and respectively to represent itself as carrying on the Griffeen Business;
 - (d) All books, records and correspondence relating to the customers of the Griffeen Business (the "**Griffeen Customers**"), including the full name, address and contact details of each Griffeen Customer and any other relevant information relating to each Griffeen Customer which are maintained by the McCabes Group at the date of the Determination;
 - (e) The leasehold interest in Unit 2, The Griffeen Centre, Griffeen Road, Lucan, Co Dublin, K78 R6P4;
 - (f) The stock in trade of the Griffeen Business as of the date of the Determination;
 - (g) The rights, interest and obligations under all contracts between the McCabes Group and each of the Griffeen Customers which are in force at the date of the Determination;
 - (h) The benefit of any claims as of the date of the Determination; and
 - (i) If requested by the prospective purchaser, and agreed by PHOENIX, any of the employees of the McCabes Group involved in the provision of services to the Griffeen Customers at the date of the Determination.



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission