

Determination

GlaxoSmithKline and Pfizer’s consumer healthcare business [2019] NZCC 4

The Commission: Dr Mark Berry
Dr Jill Walker
Dr John Small

Summary of application: An application from GlaxoSmithKline plc. seeking clearance for it, or a direct or indirect subsidiary of GlaxoSmithKline plc., to acquire up to 100% of the shares in, and/or assets of, Pfizer Inc.’s consumer healthcare business.

Determination: Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission gives clearance to the proposed acquisition.

Date of determination: 30 April 2019

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The proposed acquisition and our decision

Summary of the proposed acquisition

1. On 7 March 2019, the Commerce Commission (the Commission) registered an application from GlaxoSmithKline plc. (GSK) seeking clearance for it, or a direct or indirect subsidiary of GSK, to acquire up to 100% of the shares in, and/or assets of, Pfizer Inc.'s consumer healthcare business (the Proposed Acquisition). The clearance application relates to the Proposed Acquisition to the extent that it affects markets in New Zealand.

Our decision – clearance granted

2. The Commission gives clearance to GSK as it is satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
3. In New Zealand, there is limited overlap between the two parties and in the areas where they do compete, the merged entity would face competition from a number of well-established suppliers.

Our framework

4. Our approach to analysing the competition effects of the merger is based on the principles set out in our Mergers and Acquisitions Guidelines (our guidelines).¹

The substantial lessening of competition test

5. As required by the Commerce Act 1986, we assess mergers using the substantial lessening of competition test.
6. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).²
7. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise price above the price that would exist in a competitive market (the 'competitive price'),³ or reduce non-price factors such as quality or service below competitive levels.

When a lessening of competition is substantial

8. Only a lessening of competition that is substantial is prohibited. A lessening of competition will be substantial if it is real, of substance, or more than nominal.⁴

¹ Commerce Commission, *Mergers and Acquisitions Guidelines* (July 2013).

² *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

³ Or below competitive levels in a merger between buyers.

⁴ *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].

Some courts have used the word ‘material’ to describe a lessening of competition that is substantial.⁵

9. As set out in our guidelines, there is no bright line that separates a lessening of competition that is substantial from one which is not. What is substantial is a matter of judgement and depends on the facts of each case.⁶
10. A lessening of competition or an increase in market power may manifest itself in a number of ways, including higher prices or reduced services.⁷

When a substantial lessening of competition is likely

11. A substantial lessening of competition is ‘likely’ if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of competition is more than a possibility but does not mean that the effect needs to be more likely than not to occur.⁸

The clearance test

12. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.⁹ If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.
13. In *Woolworths* the Court held that "the existence of a 'doubt' corresponds to a failure to exclude a real chance of a substantial lessening of competition".¹⁰
14. The burden of proof lies with an applicant to satisfy us on the balance of probabilities that the proposed merger is not likely to have the effect of substantially lessening competition.¹¹ The decision to grant or refuse a clearance is necessarily to be made on the basis of all the evidence.¹² We will sometimes have before us conflicting evidence from different market participants and must determine what weight to give the evidence of each party.¹³

Key parties

15. GSK is a global pharmaceutical company active in the research, development, manufacturing and supply of prescription pharmaceuticals, human vaccines, and consumer healthcare pharmaceuticals that are available without a prescription.
16. Pfizer is also a global pharmaceutical company involved in the research, development, manufacturing and supply of medicines. Pfizer’s consumer healthcare

⁵ *Woolworths & Ors v Commerce Commission* (HC) above n4 at [129].

⁶ *Mergers and Acquisitions Guidelines* above n1 at [2.23].

⁷ *Mergers and Acquisitions Guidelines* above n1 at [2.21].

⁸ *Woolworths & Ors v Commerce Commission* (HC) above n4 at [111].

⁹ Section 66(3)(a) of the Commerce Act 1986.

¹⁰ *Commerce Commission v Woolworths Ltd* (CA) above n2 at [98].

¹¹ *Commerce Commission v Southern Cross Medical Care Society* (2001) 10 TCLR 269 (CA) at [7] and *Commerce Commission v Woolworths Ltd* (CA) above n2 at [97].

¹² *Commerce Commission v Woolworths Ltd* (CA) above n2 at [101].

¹³ *Brambles New Zealand Ltd v Commerce Commission* (2003) 10 TCLR 868 at [64].

business develops, manufactures and supplies non-prescription medicines in the areas of pain management, gastrointestinal health, respiratory, dietary supplements and personal care products.

17. In New Zealand, the main products both parties supply that are relevant to this assessment are non-prescription cold and flu treatments, and medicines for systemic pain relief. In relation to:
 - 17.1 cold and flu treatments, GSK's brands include Otrivin and Coldrex while Pfizer's brands include Robitussin and Dimetapp; and
 - 17.2 systemic pain relief treatments, GSK's brands include Panadol, Panafen Plus, Panadeine and Voltaren, while Pfizer's main brand is Advil.

Other relevant parties

18. There are other global pharmaceutical companies that also supply prescription and non-prescription medicines and treatments in New Zealand. The major suppliers with similar consumer healthcare product ranges to GSK and Pfizer in New Zealand include:
 - 18.1 Reckitt Benckiser (New Zealand) Limited (Reckitt Benckiser), which supplies cold and flu products under the Strepsils and Lemsip brands and pain relief products under the Nurofen and Disprin brands;
 - 18.2 Procter & Gamble Distributing New Zealand Limited (Procter & Gamble) which supplies cold and flu products under the Vicks brand; and
 - 18.3 Johnson & Johnson (New Zealand) Limited (Johnson & Johnson), which supplies cold and flu products under the Codral and Sudafed brands.
19. There are also other pharmaceutical companies that compete directly with global suppliers like GSK and Pfizer (albeit with smaller ranges). They include: Neilmed Pharmaceutical New Zealand Pty Limited (NeilMed); Prestige Consumer Healthcare, Inc; AFT Pharmaceuticals Limited (AFT); and iNova Pharmaceuticals (New Zealand) Limited (iNova).
20. Some other suppliers, such as Multichem NZ Limited and Australian Pharmaceutical Industries Limited, contract manufacture non-prescription medicines for retailers to supply their 'home brand' label. For example:
 - 20.1 Woolworths New Zealand Limited supplies pain relief products under the "Signature Range" label; and
 - 20.2 Foodstuffs North Island Limited and Foodstuffs South Island Limited both supply pain relief products under the "Pams" label.

Industry background

21. The Proposed Acquisition relates to the supply of pharmaceutical medicines and treatments. Before any of these types of medicines can be supplied in New Zealand, the products must be approved by the New Zealand Medicines and Medical Devices Safety Authority (Medsafe). Medsafe's role is to ensure that medicines and medical devices supplied in New Zealand have acceptable efficacy, quality and safety.¹⁴
22. Once approved by Medsafe, pharmaceutical medicines are divided into two categories: prescription medicines and over-the-counter (OTC) medicines. Prescription medicines are only available with a prescription from a doctor and are dispensed from a pharmacy. The Proposed Acquisition does not involve prescription medicines. It relates only to OTC medicines.
23. OTC medicines can be sold directly to consumers without the need for a prescription. While there are no restrictions on where most OTC products can be sold, including online, some OTC medicines are classified as pharmacy-only medicines or 'restricted medicines' which means that they can only be supplied to consumers under the direction of a pharmacist (although they can still be purchased without a prescription).
24. It is not uncommon for Medsafe to reclassify where a medicine or an active ingredient can be sold. For example, Medsafe recently reclassified dextromethorphan as a restricted medicine, so cold and flu OTC medicines containing this active ingredient have been reclassified as pharmacy-only medicine.¹⁵

Previous decisions

25. The Commission, as well as many other competition agencies, has reviewed recent acquisitions involving pharmaceutical medicines. In these assessments, the approach to assessing the relevant market has depended on the particular characteristics of the relevant pharmaceutical products and the conditions that the pharmaceuticals are used to treat.¹⁶
26. Product markets have been defined narrowly in some assessments and more broadly in others. The primary reason for a broader definition is that, within some therapeutic classes of pharmaceuticals, a wide variety of products containing different active ingredients can be used to treat similar conditions.¹⁷ However, narrower markets may be appropriate where certain active ingredients, supplied in certain forms, are used to treat different conditions. For example:

¹⁴ See www.medsafe.govt.nz

¹⁵ For example, see the Otago Daily Times article, Several cough medicines no longer available over counter 2 March 2019. Products supplied by Reckitt Benckiser, Johnson & Johnson and Procter & Gamble (as well as GSK and Pfizer) were impacted by the reclassification of dextromethorphan.

¹⁶ See GlaxoSmithKline plc and Novartis AG [2014] NZCC 37; Novartis and Alcon (Decision 692, 6 May 2010); Johnson & Johnson and Pfizer Consumer Healthcare (Decision 594, 8 December 2006); and Reckitt Benckiser plc and Boots Healthcare International Limited (Decision 567, 30 November 2005).

¹⁷ See most recently, GlaxoSmithKline plc and Novartis AG [2014] NZCC 37.

- 26.1 we have found that customers are likely to view pain relief products containing different active ingredients as good alternatives as they are all used in the treatment of pain;¹⁸
- 26.2 we have also assessed whether customers would view pain relief in different forms (ie, in systemic form as a tablet or a topical cream) or taken differently as good alternatives. As customers may view these two categories of pain relief products differently, they may not view them as good alternatives (as, unlike systemic treatments, topical treatments tend to be used externally to treat localised aches and pains).¹⁹

Market definition

27. Market definition is a tool that helps identify and assess the close competitive constraints the merged entity would face. Determining the relevant market requires us to judge whether, for example, two products are sufficiently close substitutes as a matter of fact and commercial common sense to fall within the same market.
28. We define markets in the way that best isolates the key competition issues that arise from the merger. In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products which fall outside the market but which still impose some degree of competitive constraint on the merged entity.
29. In general, the more closely substitutable two products are, the closer the competition and the greater the competitive constraint between the products.
30. As in the past, we have assessed the supply of OTC medicines separately from prescription-only medicines.²⁰ We have assessed OTC medicines supplied and sold through the grocery channel²¹ together with pharmacy-only OTC medicines because they can all be purchased without a prescription.

What the applicant submitted

31. GSK submitted that there is minimal overlap between the two parties in the supply of OTC pharmaceutical products and that the only overlap is in the national markets for the wholesale supply of:
- 31.1 OTC cold and flu products; and
- 31.2 OTC systemic pain management products.

¹⁸ See Reckitt Benckiser plc and Boots Healthcare International Limited (Decision 567, 30 November 2005).

¹⁹ See GlaxoSmithKline plc and Novartis AG [2014] NZCC 37.

²⁰ Prescription-only medicines are not generally substitutable for OTC product given their different usages, clinical risks, and related regulations. For example, see Reckitt Benckiser Plc and Boots Healthcare International Limited (Decision 567, 30 November 2005) and in Johnson & Johnson and Pfizer Consumer Healthcare (Decision 594, 8 December 2006).

²¹ The grocery channel is commonly used to describe sales made through a supermarket.

The Commission's view on the relevant markets

Cold and flu medicines

32. There are many OTC medicines to treat cold and flu symptoms including:
- 32.1 cold preparations;
 - 32.2 cough suppressants;
 - 32.3 nasal decongestants; and
 - 32.4 throat preparations.
33. As in our past assessments, an important question when assessing the substitutability of different medicines is whether products with different active ingredients, forms and application compete with one another.²²
34. Industry participants advised us that consumers make purchasing decisions based on factors which relate to the severity of their cold or flu symptoms. For example, GSK advised that as a cold or flu evolves from an initial sore throat through to a blocked or runny nose, fever, and other symptoms (with a cough typically being at its worst towards the end of the cold), customers choose products based on how far they are in the lifecycle of the cold.²³
35. Given the range of symptoms that can relate to a common cold and flu, manufacturers such as GSK, Pfizer, Reckitt Benckiser and Procter & Gamble supply a range of products to treat these symptoms. For example:
- 35.1 some medicines contain one active ingredient while others include a number;²⁴
 - 35.2 some medicines are made to target one symptom while others target multiple symptoms;²⁵ and
 - 35.3 some medicines come in several different forms, such as capsules, syrups, or sprays.²⁶

²² For example: GlaxoSmithKline plc and Novartis AG [2014] NZCC 37; Novartis and Alcon (Decision 692, 6 May 2010); Reckitt Benckiser Plc and Boots Healthcare International Limited (Decision 567, 30 November 2005); and in Johnson & Johnson and Pfizer Consumer Healthcare (Decision 594, 8 December 2006).

²³ See Clearance application from GSK (28 February 2019);

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²⁴ For example, GSK's Otrivin product contains the single active ingredient xylometazoline hydrochloride whereas its Otrivin (saline) product contains sodium chloride and pro-vitamin B5.

²⁵ For example, Pfizer supplies phenylephrine hydrochloride as a nasal decongestant and (when combined with paracetamol) as a multi symptom cold and flu treatment for "body aches and pains, headaches, runny nose, sore throat, sinus congestion, blocked nose" (under the Dimetapp brand).

²⁶ For example, Pfizer supplies guaiphenesin for the treatment to chesty cough in both capsule form and in liquid form (under the Robitussin brand).

36. We were advised that consumers tend to choose an OTC medicine that will treat the cold and flu symptom they have and so they are less concerned with the form the medicine is in or the active ingredient it contains.²⁷
37. We also understand that consumers may choose to use a multiple symptom OTC medicine to treat themselves across the ‘lifecycle’ of a cold or flu using the same product to treat the different symptoms that develop and change overtime. In this respect, we are of the view that multi-symptom OTC cold and flu products pose some competitive constraint on single-symptom products,²⁸ which is also what the European Commission recently found.²⁹
38. Further, GSK and Pfizer advised that it is relatively easy for manufacturers to switch between producing the various OTC cold and flu products as the active ingredient used in these treatments are all off-patent.³⁰ If so, this may suggest supply-side substitutability between the different cold and flu products.
39. As with other differentiated products, it is difficult to define precisely the relevant boundaries when assessing the various types of OTC products used to treat the common cold and flu. However, there is likely to be at least some substitution between single and multi-symptom products and almost all manufacturers can supply a range of cold and flu medicines. As such, for the purpose of assessing the Proposed Acquisition, we have defined the product market to include all OTC cold and flu treatments.
40. We also note that, although we have included all OTC cold and flu products in the same product market, we tested potentially narrower product markets to ensure there are no types of OTC cold and flu treatments where GSK and Pfizer are each others closest competitors.

Pain relief medicines

41. As in a previous decision, we have defined a market for OTC medicines used in the treatment of systemic pain relief.³¹
42. There are many OTC medicines (containing different active ingredients) that consumers can use to manage symptoms of mild-to-moderate pain. The main types

²⁷ []

²⁸ We note that there is likely to be a degree of asymmetry in relation to the substitutability between multi-symptom and single-symptom products. For example, a consumer with multiple cold and flu symptoms might not purchase several types of single symptom treatments, if a multi-symptom product was available.

²⁹ In 2015, the European Commission noted that, for cold and flu treatments, “multi-symptoms products pose a competitive constraint on single-symptom products; therefore, product markets encompassing each individual single-symptom product and the multi-symptom products cannot be excluded”. GlaxoSmithKline / Novartis Vaccines Business (excl. Influenza) / Novartis Consumer Health Business COMP/M.7276 28 January 2015.

³⁰ Clearance application from GSK (28 February 2019). This is also consistent with our understanding from previous investigations in this industry.

³¹ See GlaxoSmithKline plc and Novartis AG [2014] NZCC 37.

of OTC pain relief medicines include paracetamol-based products, certain opioids (such as codeine) and non-steroidal anti-inflammatory (such as diclofenac or ibuprofen).

43. OTC pain relief medicines usually contain a single active ingredient (such as paracetamol or ibuprofen) although there are also products that combine two or more of the above ingredients.³² We have found that consumers will choose the product based on the type and severity of pain.³³
44. As in the past, we have excluded prescription pain relief medicines because these products are used for the treatment of strong-to-severe pain and can only be purchased with a prescription.
45. OTC pain relief treatments are supplied in two different applications or forms: either in systemic form (such as a tablet or capsule); or in topical form (such as a gel or a cream). We have assessed systemic and topical pain relief treatments separately because systemic pain relief medicines target pain centrally while topical treatments are designed to treat more localised aches and pains.³⁴ There is also no overlap between GSK and Pfizer in the supply of OTC topical pain relief treatments.

Other relevant market dimensions

46. We consider the relevant geographic and functional dimensions to be the national market for the manufacture/importation and wholesale supply of OTC cold and flu medicines and, separately, OTC systemic pain relief medicines. Both GSK and Pfizer manufacture their products overseas and import them into New Zealand. Other manufacturers produce and supply certain pharmaceutical medicines in New Zealand.

The Commission's view on the relevant markets

47. For the purposes of our analysis, the Commission has considered separate national markets for the manufacture/importation and wholesale supply of OTC pharmaceutical medicines used in the treatment of:
 - 47.1 cold and flu (the OTC cold and flu treatment market); and
 - 47.2 systemic pain relief (the OTC systemic pain relief treatment market).

³² For example, GSK supplies pain relief products containing: paracetamol (under the Panadol brand); paracetamol and codeine phosphate (under the Panadeine brand); and ibuprofen and codeine phosphate (under the Panafen Plus brand).

³³ Clearance application from GSK (28 February 2019); GlaxoSmithKline plc and Novartis AG [2014] NZCC 37; and Reckitt Benckiser Plc and Boots Healthcare International Limited (Decision 567, 30 November 2005).

³⁴ [

With and without scenarios

48. To assess whether competition is likely to be substantially lessened in any market, we compare the likely state of competition with the acquisition to the likely state of competition without the acquisition.³⁵
49. With the acquisition, GSK would acquire the consumer healthcare business of Pfizer.
50. Without the acquisition, we consider the likely scenario is the equivalent of the status quo, with each of GSK and Pfizer continuing to operate independently of one another either under present ownership or that of an independent third party.³⁶

How the acquisition could substantially lessen competition

51. We have considered whether the acquisition would be likely to substantially lessen competition by assessing the unilateral effects of the Proposed Acquisition.³⁷
52. The Proposed Acquisition would have the effect of substantially lessening competition if the removal of Pfizer as an independent competitor would allow the merged entity by itself to be able to profitably raise prices to its customers, reduce the quality of its products, or reduce the research and innovation it undertakes in any of the relevant markets.

Competition assessment

53. GSK and Pfizer both have large portfolios of OTC healthcare medicines. However, GSK stated that the two portfolios are largely complementary and, as such, there is only limited existing (and potential) overlap between the two portfolios.
54. In the markets where there is existing and/or potential overlap between GSK and Pfizer we found that:
 - 54.1 GSK and Pfizer are not close competitors for any existing or pipeline products; and
 - 54.2 rival suppliers are likely to constrain the merged entity.

The OTC cold and flu treatment market

55. In the OTC cold and flu treatment market the Proposed Acquisition is unlikely to substantially lessen competition because:
 - 55.1 GSK and Pfizer are not close competitors; and

³⁵ *Mergers and Acquisitions Guidelines* above n1 at [2.29]; *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

³⁶ Clearance application from GSK (28 February 2019). Also [] attached to email from Chapman Tripp (on behalf of Pfizer) to the Commerce Commission (1 March 2019).

³⁷ We did not consider it likely that the Proposed Acquisition would increase the potential for any coordinated effects or conglomerate effects.

- 55.2 the merged entity would be constrained by many well-established competitors who supply substitutable products and impose a strong competitive constraint on GSK and Pfizer's OTC cold and flu medicines.
56. As set out in Table 1 below, in addition to GSK and Pfizer, there are a number of manufacturers in the OTC cold and flu treatment market and these manufacturers are likely to compete directly with the merged entity.

Table 1: Estimated market shares for the OTC cold and flu treatment market for 2018

Manufacturer	Brands	The OTC cold and flu treatment market	
		Revenue (\$)	Share (%)
GSK	Otrivin, Coldrex, Panadol Cold & Flu,	[
Pfizer	Robitussin, Dimetapp		
<i>Merged entity</i>			
Reckitt Benckiser	Strepsils, Lemsip		
Johnson & Johnson	Codral, Sudafed		
NeilMed	NeilMed		
Fess	Care		
Procter & Gamble	Vicks		
Inova	Diffiam, Duro-tuss		
All others (including Bayer, AFT Maxiclear, Multichem NZ Limited, Aspen, Sanofi, Nestle, Douglas)			
Total]	100

Source: IRI New Zealand data supplied by the Applicant

57. In addition, the Attachment includes the sales data for the main types of cold and flu treatments as well as sales data relating to some of the most prominent brands in the market.³⁸ Tables A1 and A2 indicate that in the product areas where there is existing overlap between GSK and Pfizer, there are many other existing suppliers and we understand there are no restrictions on the ability of these suppliers to expand.
58. All industry participants we spoke with advised that GSK's and Pfizer's respective cold and flu treatment product lines are not currently close competitors. For example:
- 58.1 GSK supplies a range of drops and nasal sprays, under the Otrivin label, that treat the symptoms of nasal congestion. Pfizer also has a nasal spray under its Dimetapp label but industry participants do not consider this is a close competitor to Otrivin because Otrivin is considered to be the most effective treatment;³⁹ and
- 58.2 Pfizer supplies a range of liquid cough suppressants under the Robitussin label. GSK does not have a similar product.

³⁸ This data was collected by Information Resources (New Zealand) Limited (IRI New Zealand) and all parties consider this data provides an accurate overview of the presence of the different suppliers.

³⁹ []

59. Where GSK and Pfizer have similar products, such as multi-symptoms cough, cold and flu treatments,⁴⁰ industry participants advised that GSK’s and Pfizer’s treatments compete directly with multi-symptom treatments from other suppliers including the major global pharmaceutical suppliers⁴¹ and more specialised suppliers.⁴²
60. Several parties noted that there are many suppliers across all the range of cold and flu treatments such that the merged entity would be constrained by the presence of a number of well-established suppliers.⁴³ No one we spoke with had any concerns about the impact of the Proposed Acquisition in this (or any other) market.
61. []⁴⁴
62. [] Therefore, we do not consider that GSK and Pfizer would be close competitors in respect of any pipeline OTC cold and flu medicines in New Zealand.

The OTC systemic pain relief treatment market

63. The Proposed Acquisition is unlikely to substantially lessen competition in the OTC systemic pain relief treatment market as:
- 63.1 the Proposed Acquisition would result in only a small increase in GSK’s existing market share;
- 63.2 Pfizer (through its Advil brand) imposes a weak competitive constraint on GSK’s range of pain relief treatments (which includes the brands Panadol, Panadeine, Panafen Plus and Voltaren); and

⁴⁰ GSK supplies a range of tablets and caplets, under the Panadol and Coldrex labels, that treat a variety of cough, cold and flu symptoms. Pfizer has a range of similar capsules under the Dimetapp brand.
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⁴¹ These suppliers included Reckitt Benckiser (with Lemsip); Johnson & Johnson (with Codral and Sudafed); and Procter & Gamble Distributing New Zealand Limited (with Vicks).

⁴² These suppliers include iNova (with Difflam and Durotuss), NeilMed; Prestige Consumer Healthcare, Inc (with Fess); and AFT (with Maxiclear).

⁴³

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⁴⁴ Clearance application from GSK (28 February 2019).

[]

- 63.3 the merged entity would be constrained by the presence of a number of well-established competitors who supply substitutable products that impose a strong competitive constraint on GSK.
64. As set out in Table 2 below, GSK and Pfizer are not close competitors in the supply of OTC systemic pain relief medicines. All industry participants we spoke with advised that Pfizer, with its Advil product, has only a small presence in the OTC pain relief treatment market and this is unlikely to change given the presence of other suppliers in the market.
65. Industry participants noted that generic and branded manufacturers compete directly with one another for the supply of OTC pain relief medicines and the Proposed Acquisition is unlikely to impact on this competition. To this extent, no party we spoke with has any concerns with the Proposed Acquisition because:
- 65.1 the main competition between branded manufacturers is between GSK, with its Panadol range, and Reckitt Benckiser, with its Nurofen range. Several industry parties noted that both Panadol and Nurofen are well-established brands in New Zealand with significant brand loyalty which is one of the reasons other brands (such as Advil) have a relatively limited presence in the market,⁴⁵ and
- 65.2 there are numerous other manufacturers who supply generic or private label OTC pain relief medicines.⁴⁶ For example,
[
] PHARMAC noted there is a prevalence of generic manufacturers of these types of OTC pain relief medicines.

⁴⁵ For example,
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⁴⁶

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Table 2: Estimated market shares for the systemic pain relief treatment market for 2018

Manufacturer	Brands	Revenue (\$)	Share (%)
GSK	Panadol, Panadeine, Panafen Plus, Voltaren	[
Pfizer	Advil		
<i>Merged entity</i>			
Reckitt Benckiser	Nurofen, Nuromol, Disprin		
Rex Medical Limited	Foodstuffs Pams		
Multichem NZ Limited*	Woolworths Signature Range		
	Ethics, Sonafiam		
Aspen	Pamol, Cartia		
All others (including AFT's Maxigesic, Sanofi, Bayer)			
Total]	100

Source: IRI New Zealand data supplied by the Applicant. *Multichem NZ Limited currently contract manufactures for Woolworths New Zealand Limited.

66. In addition, we do not consider that GSK and Pfizer are close competitors for any pipeline OTC systemic pain relief treatment products in New Zealand.

66.1 [

66.2

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Overall conclusion

67. GSK and Pfizer each have large portfolios of OTC healthcare medicines although there is limited existing (and potential) overlap between the two portfolios in New Zealand.
68. For the purposes of assessing this application, we have considered two relevant markets namely:
- 68.1 the OTC cold and flu treatment market; and
- 68.2 the OTC systemic pain relief treatment market.

⁴⁷ For example, see [] attached to email from Bell Gully (on behalf of GSK) to the Commerce Commission 28 February 2019; and [] attached to email from Chapman Tripp (on behalf of Pfizer) to the Commerce Commission (1 March 2019).

69. In each of these markets, GSK and Pfizer do not appear to be close competitors for any existing or pipeline products, and rival suppliers are likely to constrain the merged entity.
70. Accordingly, we are satisfied that the Proposed Acquisition is unlikely to substantially lessen competition in any relevant market.

Determination on notice of clearance

71. Under section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance to GlaxoSmithKline plc. for it, or a direct or indirect subsidiary of GlaxoSmithKline plc, to acquire up to 100% of the shares in, and/or assets of, Pfizer Inc.'s consumer healthcare business.

Dated this 30th day of April 2019

Dr Mark Berry
Chairman

Attachment: Sales data for the OTC cold and flu treatment market

Table A1: Estimated market shares for the OTC cold and flu treatment market for 2018

Manufacturer	Brands	Single-symptom nasal decongestants		Multi-symptom cold and flu treatments		Combined cold preparations and nasal decongestants#		The OTC cold and flu treatment market*	
		Revenue	Share	Revenue	Share	Revenue	Share	Revenue	Share
GSK	Otrivin, Coldrex, Panadol Cold & Flu	[
Pfizer	Robitussin Dimetapp								
<i>Merged entity</i>									
Reckitt Benckiser	Strepsils, Lemsip								
Johnson & Johnson	Codral, Sudafed								
NeilMed	NeilMed								
Fess	Care								
Procter & Gamble	Vicks								
Inova	Diffлам, Duro-tuss								
All others (including Bayer, AFT Maxiclear, MultiChem, Aspen, Sanofi, Nestle, Douglas)									
Total]	100%

Source: IRI New Zealand data supplied by the Applicant. #Includes data from single-symptom nasal decongestants and multi-symptom cold and flu products. * Includes data from the combined cold preparations and nasal decongestants as well as all other cold and flu products.

Table A2: Prominent brands in the OTC cold and flu treatment market

Manufacturer	Brand	Form	Revenue in 2018 (\$)
Single-symptom nasal decongestants*			
GSK	Otrivin	Nasal spray, drops	[
Pfizer	Dimetapp	Nasal spray	
NeilMed	Sinus Rinse	Nasal spray, sachets	
Johnson & Johnson	Sudafed, Codral	Nasal spray, tablets	
Fess	Care	Nasal spray	
AFT	Maxiclear	Tablets	
Cough medicine*			
Procter & Gamble	Vicks	Drops, Ointment	
Pfizer	Robitussin	Capsules, oral liquid	
Inova	Difflam	Lozenges, gargle	
Inova	Duro-tuss cough	Syrup, tablets	
Reckitt Benckiser	Mucinex cough	Tablets	
Nestle	Soothers	Lozenges	
Multi-symptom cold and flu products*			
Johnson & Johnson	Codral	Capsules	
Reckitt Benckiser	Lemsip	Capsule	
Johnson & Johnson	Sudafed	Tablets	
Pfizer	Dimetapp	Liquid capsule	
GSK	Coldrex	Tablets	
GSK	Panadol	Caplets	
Reckitt Benckiser	Nurofen	Tablets	
The OTC cold and flu treatment market]

Source: IRI New Zealand data supplied by the Applicant. *Does not include all treatments or manufacturers.