

COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

18 June 2014

TO: The Registrar
Mergers and Authorisations
Commerce Commission
P O Box 2351
Wellington

PURSUANT TO SECTION 66(1) OF THE COMMERCE ACT 1986, NOTICE IS HEREBY GIVEN SEEKING CLEARANCE FOR A PROPOSED MERGER.

EXECUTIVE SUMMARY

- 1 CDC Pharmaceuticals Limited (CDC) and Pharmacy Wholesalers (Central) Limited (PWL) (jointly the Applicants) seek clearance to merge their businesses through an amalgamation (the Transaction).
- 2 CDC and PWL are both co-operative companies registered under the Co-operative Companies Act 1996 and each are substantially wholly owned by pharmacies which they respectively supply.
- 3 The Applicants wish to complete a merger pursuant to the amalgamation provisions contained in Part 13 of the Companies Act 1993. On completion of the merger CDC will be the surviving company under the amalgamation.
- 4 The merger will require the approval of the Shareholders of both CDC and PWL in accordance with the provisions of the Companies Act 1993.
- 5 CDC and PWL are each engaged in the wholesaling of prescription and over-the-counter (OTC) pharmaceutical products to retail pharmacies throughout New Zealand. Each of them also supply specialist pharmaceutical products to public hospitals and CDC also supplies those products to private hospitals throughout New Zealand.
- 6 CDC supplies its pharmacy clients primarily in the South Island, Wellington and, to a lesser extent, Auckland, while PWL supplies in the central North Island and, to a lesser extent, Auckland.
- 7 CDC also supplies veterinary products, but PWL does not supply that market.
- 8 CDC and PWL along with Pharmacy Wholesalers (Bay of Plenty) Limited provide marketing and logistic services to the ACCESS buying group of retail pharmacies.
- 9 The major competitor of CDC and PWL in the wholesaling of pharmaceutical products market is ProPharma, which is the trading name of Pharmacy Retailing (NZ) Limited and is wholly owned by EBOS Group Limited (EBOS).
- 10 The industry in which the Applicants are involved was examined in detail by the Commerce Commission in its February 2001 decision relating to Zuellig Pharma Limited and Sigma NZ Limited (Decision 417). The Applicants consider that there have been changes to the markets within New Zealand since Decision 417 was released.
- 11 In Decision 417 the Commission opted for three geographic markets for the wholesaling of prescription and OTC pharmaceutical products to retail pharmacies in New Zealand. The Applicants believe that the market dynamics have changed since 2001 and that rather than

three separate geographic markets there is now one New Zealand wide market for such wholesaling of products.

- 12 The Commission in Decision 417 also indicated that there was a separate market for the provision of specialist pharmaceutical products to hospitals. Although the Applicants believe that there are good arguments to support the view that the supply to hospitals is not a separate market, they have approached this application on the basis that there is a separate market for the supply to hospitals.
- 13 The Applicants believe that the proposed merger will not adversely impact on competition however they are conscious that the Commission has examined the industry in the past and they wish to ensure that the Commission has up to date information on the industry.
- 14 As was the situation in Decision 417, the industry is largely influenced by the power of PHARMAC which effectively controls the pricing for the significant percentage of products supplied to the market by the Applicants.

PART 1: TRANSACTION DETAILS

1. Provide the name of the acquirer (person giving notice), and the name and position of the individual responsible for the notice. Please include the:
 - registered office address, postal address and physical address of the acquirer;
 - telephone and fax numbers and website of the acquirer; and
 - email address, telephone number and position of the contact person.

1.1. CDC

Registered Office:

CDC Pharmaceuticals Limited, 26 Logistics Drive, Harewood, Christchurch 8051

PO Box 14036, Orchard Road, Christchurch 8544

Physical Address:

26 Logistics Drive, Harewood, Christchurch

Ph: 03 359 3970 Fax: 03 359 3971 Web: www.cdc.co.nz

Contact Person:

Mike Rhodes, mike@cdc.co.nz, 03 359 3970

Position:

Chief Executive Officer

1.2. **PWL**

Registered Office:

Pharmacy Wholesalers (Central) Limited, 207 Courtenay Street, New Plymouth. PO Box 105, New Plymouth 4340

Physical Address:

207 Courtenay Street, New Plymouth

Ph: 06 757 3061 Fax: 06 757 9963 Web: www.pwlccentral.co.nz

Contact Person:

Warren Davis, warren@pwlccentral.co.nz, 06 757 3061

Position:

Chief Executive Officer

1.3. All correspondence and notices in respect of this application should be copied to:

C G Weir, Consultant, Anthony Harper Lawyers

Level 9, HSBC Tower, 62 Worcester Boulevard, P O Box 2646, Christchurch 8140

Ph: 03 364 3805 Fax: 03 366 9277 Email: Chris.Weir@ah.co.nz

2. Provide the name of the other merger parties, and the name/position of the relevant individual within the relevant merger parties. For each merger party, please include the:
 - registered office address, postal address and physical address;
 - telephone and fax number and website; and
 - email address, telephone number and position of the contact person.

See response to question 1.

3. With respect to the merger parties, list the relevant companies and the person or persons controlling these directly or indirectly. Please use organisational charts or diagrams to show the structure of the ownership and control of the acquirer and participant(s) to the acquisition.
- If relevant, identify and explain any other links, formal or informal, between the merger parties, including interconnected bodies corporate and other persons identified in question 3 above and its/their existing competitors in each market.

CDC Pharmaceuticals Ltd

- 3.1. CDC, a duly incorporated company and a co-operative company, is engaged in the following activities:
- The wholesaling of prescription and over-the-counter (OTC) pharmaceutical products to retail pharmacies in New Zealand from warehouses in Wellington, Christchurch and Dunedin.
 - The wholesale supply of specialist pharmaceutical products to [] private hospitals throughout New Zealand and [] public (DHB) hospitals in the upper South Island and lower North Island region.
 - The provision (with PWL Central and Pharmacy Wholesalers (Bay of Plenty) Ltd) of marketing and logistic services to the ACCESS Buying Group of retail pharmacies.
- 3.2. As a co-operative company CDC is owned by the various pharmacies it supplies. Again, as a co-operative company, it is inherent that the benefit of the ordinary shareholding held by member pharmacies is the entitlement to be part of the co-operative and its principles and is not held as an investment. The shareholding conveys a right to earn rebates through trading with CDC.
- 3.3. CDC has operated in New Zealand since 1927 when it was incorporated. In 2001 CDC opened a branch in Wellington and in 2012 CDC purchased a private company in Dunedin (Southern Medical Products) which operated as a small wholesaler of veterinary products and also as a small wholesaler of pharmaceutical products.
- 3.4. CDC is wholly owned by its [] shareholder pharmacies and has five directors. It is managed by its Chief Executive Officer and has a conventional management structure. Further information on CDC is available at www.cdc.co.nz.

Pharmacy Wholesalers (Central) Limited

- 3.5. PWL, a duly incorporated company and a co-operative company, is engaged in the following activities:
- The wholesaling of prescription and over-the-counter (OTC) pharmaceutical products to retail pharmacies throughout the central North Island from warehouses in New Plymouth, Wanganui and Napier.
 - The wholesale supply of specialist pharmaceutical products to [] public (DHB) hospitals in the central North Island region.
 - The joint provision (with CDC and Pharmacy Wholesalers (Bay of Plenty) Ltd) of marketing and logistic services to the ACCESS Buying Group of retail pharmacies.
- 3.6. As a co-operative company PWL is owned substantially by the various pharmacies it supplies. Again, as a co-operative company it is inherent that the benefit of the ordinary shareholding held by member pharmacies is the entitlement to be part of the co-operative and its principles and is not held as an investment. The shareholding conveys a right to earn rebates through trading with PWL.
- 3.7. PWL has operated in New Zealand since 1978 when it was incorporated as Pharmacy Wholesalers (Taranaki) Ltd. It amalgamated with Pharmacy Wholesalers (Hawkes Bay) in 1995 becoming Pharmacy Wholesalers (Central) Ltd and in 2000 a further amalgamation saw the Medi-Group Limited (a small wholesaler of pharmaceutical products) in Wanganui added.

- 3.8. PWL is owned primarily by its [] shareholder pharmacies along with [] and has seven directors. It is managed by its Chief Executive Officer and has a conventional management structure. Further information on PWL is available at www.pwlcentral.co.nz.

4. Provide details on what is to be acquired.

- 4.1. This is a proposed merger of all the assets and operations of CDC and PWL. It is intended that the merger be completed pursuant to Part 13 of the Companies Act 1993 following approval by the shareholders of both companies and that on completion CDC will be the surviving company. All of the existing trading shareholders of CDC and PWL will be shareholders in the merged company.

5. Fully explain the commercial rationale for the proposed merger. Specify whether this is part of an international merger.

- 5.1. The purpose of the merger is to create efficiencies through long term economies of scale and to increase the service and benefits to member customers. More importantly it will also ensure a longer term more viable wholesale supply chain to pharmacies and hospitals and reduce the potential for market domination by the major competitor, ProPharma (the trading name of Pharmacy Retailing (NZ) Limited which is wholly owned by EBOS), thus ensuring effective competition remains within the industry.
- 5.2. This is not part of an international merger.

6. Provide copies of the final or the most recent versions of any documents bringing about the proposed merger (e.g. contracts, sales and purchase agreements, or offer documents if it is a public bid).

- 6.1. A copy of the Amalgamation Agreement is attached as **Annexure A**. Documentation which will follow on from the Amalgamation Agreement is currently being finalised and will be made available if required.

7. If any other jurisdiction's competition agency has been (or will be) notified of the proposed merger, please list each competition agency notified (or to be notified) and the date of the notification.

- 7.1 Please indicate whether you would be willing to provide the Commission with a waiver allowing it to exchange confidential information with competition agencies in other jurisdictions in respect of the proposed merger.

- 7.1. No other agency is being notified of the proposed merger.

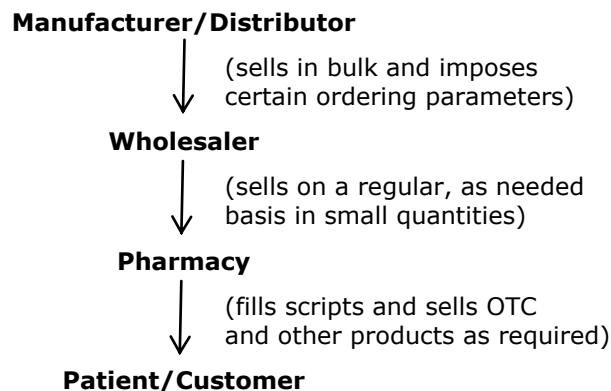
PART 2: THE INDUSTRY

8. Describe the relevant goods or services supplied by the merger parties (it is sufficient to refer in general terms to activities in which there will be no aggregation).

- 8.1. CDC and PWL both operate in the same product market and supply prescription and OTC products to both pharmacies and hospitals. CDC also supplies some veterinary products to veterinary clinics but PWL does not operate in that market.
- 8.2. Both companies (jointly with Pharmacy Wholesalers (Bay of Plenty) Ltd), provide buying group marketing and logistics services and support to [] retail pharmacies for the ACCESS Buying Group. This involves co-ordination, printing and delivery of a promotional flyer in a "letterbox drop" and the group buying of the products in the promotion. There are [] such promotions per year. The ACCESS Buying Group is a very minor part of the Applicants' businesses and accounts for [] of CDC's sales and [] of PWL's sales.

9. Describe the industry or industries affected by the proposed acquisition. Where relevant, describe how sales are made, the supply chain(s) of any product(s) or service(s) involved, and the manufacturing process. If relevant, provide a glossary of terms and acronyms.

- 9.1. CDC and PWL both operate in the same product market being the wholesale supply of pharmaceutical and OTC products to pharmacies and hospitals. The newly merged company will initially service approximately [] retail pharmacies in the North and South Islands from a total of 963 pharmacies in New Zealand.
- 9.2. Wholesalers perform a vital link in the supply chain of prescription goods from the manufacturer to the customer/patient. The supply chain tends to follow a normal business model.



Industry Background

- 9.3. The Applicants believe that the most relevant previous decision of the Commission relating to the industry was that contained in the decision in Zuellig Pharma Limited and Sigma NZ Limited (Decision 417) which was issued in February 2001. Decision 417 described how the market operated at the time, but some of the market dynamics have changed in the interim. The Applicants in the following description of the current operation of the market have, where relevant, referred to factors outlined in Decision 417.
- 9.4. Pharmaceutical products are generally divided into two separate categories of prescription and OTC. Most prescription pharmaceuticals in New Zealand are subsidised. The demand for pharmaceuticals is driven by what general practitioners prescribe patients.

Prescription-only pharmaceuticals can be supplied by retail pharmacies solely to persons holding a prescription.

- 9.5. An increasing number of OTC pharmaceuticals can be sold directly to consumers, without prescription, by pharmacies, supermarkets, service stations and other retail stores. Some OTC pharmaceuticals are classified as pharmacy only or pharmacist only, meaning they can only be sold through registered pharmacies or by registered pharmacists.
- 9.6. The majority of pharmaceutical products sold in New Zealand are sourced mainly from large international pharmaceutical manufacturers or suppliers. There are a decreasing number of products manufactured in New Zealand by companies such as Douglas and API Consumer. Suppliers undertake the distribution of pharmaceuticals themselves or in some instances will appoint a company like Healthcare Logistics to distribute their products.
- 9.7. Wholesalers source pharmaceuticals from suppliers directly, or through a distributor, and re-sell the products mainly to retail pharmacies. For most pharmaceutical wholesalers, around 85% of their business is generated from prescription pharmaceuticals and hospital products and the balance from OTC pharmaceuticals and other products.
- 9.8. Some wholesalers also supply pharmaceuticals to hospitals and various other customers.
- 9.9. Wholesalers in the main use the services of third party trucking or courier companies to deliver pharmaceuticals to pharmacies, [].
- 9.10. Some hospitals source the majority of their pharmaceuticals direct from suppliers. Others source from specialist logistic companies such as OneLink, (which is owned by EBOS) or through wholesalers such as CDC and PWL.
- 9.11. Pharmaceutical suppliers also sell direct to retail pharmacies, although this is generally confined to larger orders of OTC products. The Applicants believe that direct sales to retail pharmacies have declined and the latest IMS Health (NZ) Limited report puts direct supply at [] of total pharmaceutical sales on a national basis.
- 9.12. Historically, a number of retail pharmacies received same-day supply, with some receiving multiple deliveries. Over recent years the number of pharmacies receiving multiple daily deliveries has declined. CDC previously delivered to some pharmacies up to three times a day in Christchurch and Wellington, however the majority now have one main daily delivery only. The requirements of the CPSA (Community Pharmacy Service Agreement) contract stipulates that 90% of scripts be filled within one hour, which requires pharmacies to hold sufficient stocks, 99% within 24 hours, thus the overnight or one delivery per day and 100% within 48 hours, which covers harder to get products sourced from the supplier by the wholesaler and then delivered to the pharmacy. These overnight deliveries can be and are dispatched from warehouses in other parts of the country to be received the next day.
- 9.13. Switching between wholesalers of pharmaceutical products occurs within the industry. In the last 18 months the Applicants [].

The Applicants

- 9.14. CDC operates warehouses in Dunedin, Christchurch and Wellington supplying predominantly to retail pharmacies in the South Island, Wellington and Auckland. It also supplies specialist medical products to [] private hospitals throughout New Zealand and [] public hospitals in the upper South Island and lower North Island.
- 9.15. PWL operates from warehouses in New Plymouth, Wanganui and Napier, primarily servicing retail pharmacies in the central North Island and, to a lesser extent, Auckland. It also supplies specialist pharmaceutical products to [] public hospitals in the central North Island.

Pharmacy Retailing

- 9.16. Generally pharmacies have three business categories. These include the dispensing of pharmaceuticals prescribed by authorised practitioners, the sale of OTC pharmaceutical products and the sale of a wide range of other goods and services such as beauty and healthcare products.
- 9.17. As a result of various statutory restrictions, pharmacies have a legal monopoly in respect of the retail supply of many pharmaceutical products.

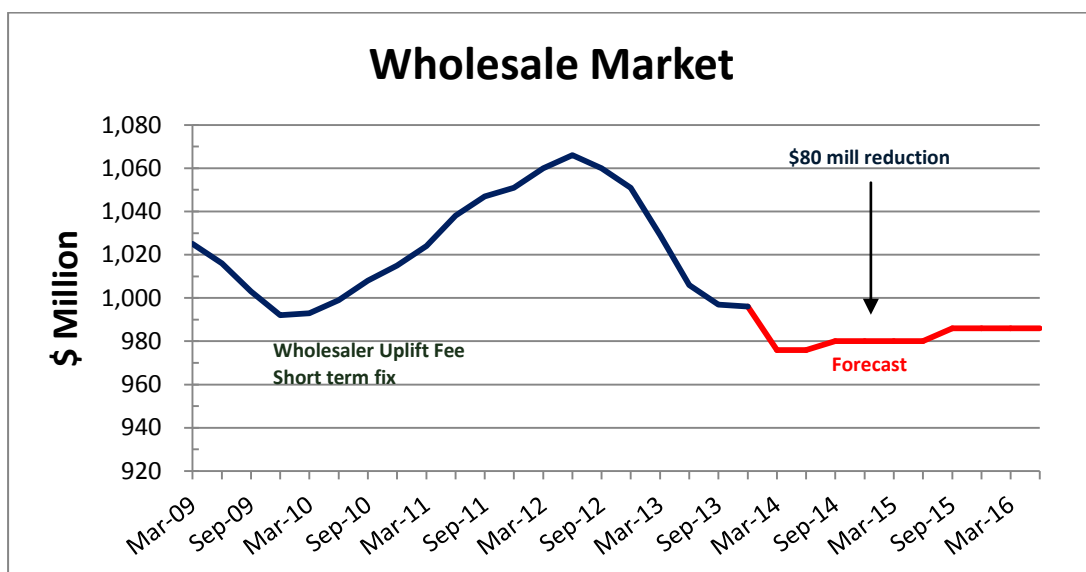
- 9.18. Retail pharmacists are paid through a combination of direct payment from customers and reimbursement by the government for the dispensing of prescriptions. There is a current contract for dispensing payments which runs until June 2015. This contract is being renegotiated as the contract progresses (and has since its inception in July 2012) with the final funding step (formula) set for July 2014. At this stage the exact details of how pharmacies will be funded for the prescription services is not finalised for the 1 July 2014 change which has now been pushed back to 1 August 2014. This has created much uncertainty amongst pharmacies which are essentially providing services without knowing exactly how they will be paid. There are no longer any differences between the North and the South Islands in respect of payments. The basic concept behind the new contract is the provision of a service to customers rather than a fee for dispensing. Customers (patients) are basically categorised as LTC (long term care) requiring more regular attention (say monthly) and Core Services which are those who predominantly can manage their own medicines and receive medicines in quantities of three months at a time.
- 9.19. In the case of restricted and pharmacy-only pharmaceuticals, the pharmacist is responsible for setting the retail price.
- 9.20. For medical or healthcare products which are not in the categories confined to pharmacies, the pharmacies face increasing competition from others, including supermarkets and a range of other retailers. Supermarkets have successfully petitioned for a number of previously pharmacy-only medicines to now be open-selling, so that they can stock them. The Warehouse and service stations are now also stocking products such as Panadol etc. Foodstuffs has established a dedicated unit for the sole purpose of lobbying for the removal of previously pharmacy-only medicines to be changed to open-selling.
- 9.21. There are currently around 963 retail pharmacies in New Zealand. Of these, approximately 540 are currently affiliated to Banner or Buying Groups. It is estimated that Banner Groups account for a higher share calculated on revenue, based on the fact that many pharmacies belonging to Banner Groups are larger outlets situated in shopping malls or high streets.
- 9.22. The ACCESS Group comprises approximately [] pharmacies [] and the VANTAGE Group consists of about 90 pharmacies and is operated by ProPharma. These two groups are more accurately described as Buying Groups rather than Banner Groups. Banner Groups such as Amcal, Unichem, Life and Radius in addition to operating Buying Group advantages take this further by having more stringent standards such as merchandising, colours and promotions that members must adhere to. Buying Groups are less structured than Banner Groups.
- 9.23. A group of independent retail pharmacies utilising the name Unichem Chemists started the concept of a Banner Group with the purpose of creating an image and thereby differentiating the pharmacies affiliated to that group from other pharmacies. Currently the Banner Groups are Unichem, Amcal, Radius and Life although the Applicants understand that Green Cross Health Limited (which changed its name from PharmacyBrands Limited on 1 April 2014) which owns all of these Banner Groups is streamlining them down to just Life and Unichem.
- 9.24. Differentiation is achieved through the provision of services to Banner Group members such as the benefits of group advertising, access to group purchasing, the acquisition of the Banner Group's image, and access to support services such as training and development, information technology systems, standardized staff uniforms, store design and fit out. Buying Groups perform similar activities to Banner Groups, but are usually less structured in their marketing and advertising activities with the focus being on joint buying of products.
- 9.25. Pharmacies which are members of Banner Groups are not bound by exclusivity from the wholesaler associated with their group.
- 9.26. Currently, the Applicants believe that Green Cross Health Limited now has over 300 member pharmacies.
- 9.27. The primary function of Buying Groups is the organisation of "letterbox drop" promotions and the group purchasing of products in these promotions.

Regulatory Environment

- 9.28. The importation, sale and distribution of pharmaceuticals are tightly controlled in New Zealand, principally through the Medicines Act 1981 and associated regulations. All new or altered medicines require the approval of the Minister of Health before they can be marketed in New Zealand. Some pharmaceuticals, which have not been registered, may be supplied subject to a medical practitioner's prescription. Wholesalers of pharmaceuticals require a licence to operate. MedSafe manages the approval system and the Ministry of Health is responsible for the granting of wholesale licences.
- 9.29. Section 3 of the Medicines Act 1981 defines three categories of medicinal drugs which are declared by regulation or by notice given under section 106 of the Medicines Act. These categories are prescription medicines, restricted medicines and pharmacy-only medicines. A prescription medicine can be supplied only pursuant to a prescription by an authorised person. Only a registered pharmacist can supply a registered medicine, while only premises with a licence to sell medicinal drugs can supply a pharmacy-only medicine.
- 9.30. Pharmacies are regulated by the Health Practitioners Confidence Assurance Act 2003 and the Medicines Act 1981. Restrictions on the operation of pharmacies are set out in sections 42A-42C of the Medicines Act 1981. In addition, sections 55E and 55F of the Medicines Act 1981 provide that a pharmacy has to be owned at least 51% by a pharmacist or pharmacists and a pharmacist can own up to five pharmacies. In theory, an outsider could own 49% of a pharmacy. The Applicants believe that Green Cross Health Limited, which owns the Unichem, Amcal, Radius and Life brands also owns 49% of approximately 60 pharmacies.
- 9.31. After receiving marketing approval, a manufacturer/supplier of pharmaceuticals usually applies to PHARMAC to have the medicine included on the Pharmaceutical Schedule. Inclusion means patients can gain access to the medicine via a government subsidy for the cost of the pharmaceuticals. The level of patient subsidy is decided through measures such as a reference pricing system, where the subsidy for all medicines in the same therapeutic sub group is set at the level of the lowest price pharmaceutical in that sub group. This is applied where PHARMAC considers the medicines have the same or similar therapeutic effects in treating the same or similar condition.

The Role of PHARMAC in the market and on competition

- 9.32. The pricing of prescription pharmaceuticals is determined to a significant extent by the policies of PHARMAC. It sets the subsidised price for pharmaceuticals. The effect of these policies has been to squeeze margins at the wholesaling and retailing levels of pharmaceutical distribution in New Zealand. Below is a graph which shows the impact on the industry of PHARMAC reducing the price of products and not reinvesting the savings.



- 9.33. Since 2009 PHARMAC has saved \$375 million by price reductions on products, however the volume of work (quantity sold) has not changed. The above graph indicates PHARMAC reinvested some of that money (savings) during 2010-2012 which created more work (additional items funded). Since mid 2012 savings PHARMAC has made have not been reinvested and its projections show it will not be reinvested. Therefore, the wholesalers are doing more work for less return. With that \$375 million equates to \$15 million in stock procurement margin that the pharmacy would have received and by default wholesalers could have received. Where PHARMAC has reinvested it has resulted in additional work – more prescriptions to fill. 49% of the Applicant's work (volume) represents just 7.8% of its turnover. PHARMAC's expected spend on community pharmaceuticals was \$803 million for the 2013 year, which was a \$49.5 million drop on the 2012 year and PHARMAC expects a further \$30 million drop in the 2014 year to \$773 million then going to \$777 million in 2015 and \$783 million in 2016.
- 9.34. The drop in 2009 indicated in the above graph created an issue for the industry regarding the margin/money taken out. To address this a "wholesale uplift fee" (WUF) was introduced by the DHB's. This effectively was a temporary payment to pharmacies to compensate for the margin removed from the industry until the reinvestment occurred. Viability of wholesalers was an issue and CDC altered its terms of trade to reflect the lost margin impact, which was effectively passed on to pharmacies, thus the need for the short term WUF.
- 9.35. The retail price for prescription pharmaceuticals is made up of the following components:
- (a) the manufacturers'/suppliers' selling prices, which are generally equal to the subsidies PHARMAC provides for some pharmaceuticals listed in the Pharmaceutical Schedule. A premium may apply to some pharmaceuticals for which the consumer pays;
 - (b) a margin on PHARMAC's subsidy, which covers stock holding and procurement costs (currently 4% for items under \$150 and 5% for items above \$150); and
 - (c) a service/patient fee which is reimbursed to retail pharmacies.
- 9.36. As the price ex-supplier is determined by the policies of PHARMAC, and the reimbursement to retail pharmacies is set under contract, the only scope available for a wholesaler to affect wholesale pricing is in terms of its margin. However, even that is limited. The wholesale margin is usually derived from a base margin which is then discounted back for prompt payment, efficiency in buying and for the volume of business undertaken.
- 9.37. The wholesale pricing of most OTC pharmaceuticals is not subject to the regulatory constraints outlined above. Rather, it is influenced by competitive forces, including the availability of many OTC products from retail pharmacies, supermarkets, department stores and service stations. Typically, the wholesale margins for OTC pharmaceuticals are between 3.5% and 16% derived from a mark up of 17.5% to 19% less discounts.
- 9.38. PHARMAC is the price setting/negotiating agency which determines the subsidised price and therefore effective price of pharmaceuticals (both for hospitals and pharmacies) in New Zealand. The effect of the PHARMAC pricing policies has been to reduce the price of pharmaceuticals within New Zealand therefore saving the government hundreds of millions of dollars. PHARMAC has been very successful in doing this and price reductions in the vicinity of 80%-90% of high volume prescription drugs have not been uncommon. This has the result of impacting significantly on the gross profit margins for pharmacies and for wholesalers.
- 9.39. The manufacturers' price is generally the PHARMAC set subsidy price. The wholesaler will apply its terms of trade to this price when selling to pharmacies and hospitals. The pharmacy is reimbursed by the Ministry of Health (MOH) based on the subsidy price plus a "stock holding and procurement" margin of 4% for subsidised products under \$150 and 5% for subsidised products above \$150. Pharmacies also receive a fee (previously a dispensing fee, now known as a patient fee) for servicing the patient (filling the prescription).
- 9.40. PHARMAC's price reduction policies have had the impact of significantly squeezing the margins within the industry and then have a double impact when savings they make are not reinvested in other products flowing through the pharmacy chain, as has happened in 2009 and again in 2013 when some \$80 million plus savings have been diverted to other health needs.

9.41. DHB Shared Service (DHBSS) has also become involved in the market since Decision 417. DHBSS is the agency which processes the payments to pharmacies on behalf of the DHBs. It is also involved in the new pharmacy contract negotiations.

9.42. The following extract from Pharmacy Today summarises the level of involvement of DHBSS:

Friday 31 January 2014, 11:18AM

With the next stage of the Pharmacy Services Agreement fast approaching, pharmacists are called on to provide feedback on a new Core service funding model.

District Health Board Shared Services has kicked off a survey on the back of its Community Pharmacy Stage 4 Proposed Funding Model - The Journey document.

The document details two alternative proposed funding methods - with the view to implement a new model on 1 July when stage four of the contract comes into effect.

The proposed methods attempt to address feedback from stakeholders that the previously proposed method - a single fee per Core service patient per visit - is unsuitable.

10. Describe the current industry trends and developments including the role of imports and exports, emerging technologies, and/or changes in supply and demand dynamics.

10.1. The role of PHARMAC has expanded and now includes hospital devices and medical consumables. Health Benefits Ltd (represents the DHBs in New Zealand) has awarded large supply contracts to OneLink Ltd (a subsidiary of EBOS) for hospital supplies which has the effect of reducing competition in the hospital supply market. It is the Applicant's view that EBOS is positioning itself to dominate the hospital supply market.

10.2. The ever increasing presence of online shopping is also occurring in the pharmacy industry. There are many websites offering predominantly OTC products but some also offer dispensary items.

11. Please highlight any relevant mergers that have occurred in this industry over the past three years.

Include:

11.1 any acquisition of assets of a business or shares which the merger parties (or any interconnected or associated businesses) have undertaken in the last three years.

11.1. In 2012 CDC purchased the small Dunedin company, Southern Medical Products which operated as a small wholesaler of veterinary products and pharmaceutical products.

PART 3: MARKET DEFINITION

HORIZONTAL AGGREGATION

12. For each area of aggregation of market shares, please define the relevant market(s) for the:
- 12.1 product(s) or service(s);
 - 12.2 functional level;
 - 12.3 geographic area; and
 - 12.4 customer dimension and timeframe (if relevant).

- 12.1. The Applicants believe there will be minimal horizontal aggregation in the market of wholesale supply of prescription and over-the-counter (OTC) pharmaceutical products to retail pharmacies in New Zealand and in the wholesale supply of specialist pharmaceutical products to hospitals in New Zealand.
- 12.2. The merged entity will continue jointly with Pharmacy Wholesalers (Bay of Plenty) Ltd to provide marketing and logistic services to the ACCESS Buying Group of retail pharmacies. In effect there will be no change in that market.
- 12.3. In Decision 417, the Commission determined there were three separate geographic markets for the wholesaling of prescription and OTC pharmaceutical products. These markets were for wholesaling to pharmacies. In addition, the Commission in paragraph 70 stated that the relevant market did not extend to the bulk supply of pharmaceuticals to hospitals. The Applicant believes that the operation of the market has changed since Decision 417 and believes that currently there is one national market for the wholesaling of prescription and OTC pharmaceutical products. It also believes there is a case to be made that such a market includes both pharmacy and hospital supply, although for the purposes of this application it has treated the pharmacy and hospital markets as being separate.

The Pharmaceutical Wholesaling Market

Product Market

- 12.4. Pharmaceutical products within the industry tend to be categorized into prescription, hospital and OTC pharmaceutical products. A number of hospital products are also general prescription products but may have a differing price structure as determined by PHARMAC and specified in Section H of the Pharmaceutical Schedule. Other hospital products are specialist products for use within the hospital only; however they are purchased from the same suppliers as general prescription products and treated the same way within the wholesaling business as other products. In terms of treatment within the Applicants' wholesaling businesses (ordering, stocking, picking, packing and delivery) there are no distinguishing characteristics between prescription, OTC or hospital product categories.
- 12.5. The Commission's previous finding in paragraph 70 of Decision 417 stated that the wholesaling of pharmaceuticals to retail pharmacies did not extend to bulk supply of pharmaceuticals to hospitals. The Applicants believe that the market has changed significantly since Decision 417 and while some hospitals still purchase bulk supplies direct, most are now using a wholesaler for such purchases. CDC is also supplying approximately [] of the private hospital market [], a market that predominately purchased through pharmacies at the time of Decision 417.
- 12.6. Many pharmaceuticals are now not distinguished between hospital and pharmacy (again a change since Decision 417) and are treated the same in terms of wholesaling. There are of course specialist hospital pharmaceuticals, however in terms of wholesale supply these are treated (ordered, stocked and supplied) in the same manner as other pharmaceuticals. Some pharmacies are supplying BSO (bulk supply order) pharmaceuticals for hospitals and as such order as normal from their wholesaler. A large proportion of Section H of the Pharmaceutical Schedule is now pharmacy product, whereas it used to be predominately hospital product.

Functional Market

- 12.7. It is CDC's and PWL's view that they operate in just one functional market, being wholesaling.

Geographic Market

- 12.8. Customers tend to define the market by wholesaler differentiation being either ProPharma or a Co-operative Company. Customers do not tend to consider the three current co-operative wholesalers (CDC, PWL Central and PWL BOP) as competitors. This is most likely due to the three co-operatives ("3 co-ops") essentially operating in separate regions (CDC – South Island and Wellington for Pharmacy business and nationwide for Hospital business, PWL Central – mid North Island, PWL BOP – BOP and Waikato) the exception being the Auckland market where all 3 co-ops do have some customers with PWL BOP holding the majority of the 3 co-ops.
- 12.9. The Applicants suspect that customers may essentially see ProPharma as the "nationwide" wholesaler and the 3 co-ops as "regional" wholesalers. However, in the Applicants' views, there is in reality a New Zealand wide market.
- 12.10. The Pharmacy Contract between a DHB and each pharmacy (CPSA) provides that 90% of scripts will be filled within 1 hour, 99% by the close of the business on the next business day and 100% by the close of business 2 working days after the script is presented. A pharmacy will need to hold sufficient stocks within the pharmacy to meet the 90% threshold within 1 hour. Should a pharmacy be located within the same town as a wholesaler it is very unlikely a delivery can be made within an hour. There are many pharmacies throughout New Zealand that do not have a wholesaler located within their town and as such they rely on a "next day" delivery service. This has become the norm within rural (and sometimes not-so-rural) pharmacies for some time now. While the same day supply is possible to much of New Zealand, it is no longer the standard. With the services of third party courier companies being plentiful within New Zealand and the reach they provide (literally the width and breadth of the country) it is possible to have deliveries to any pharmacy in New Zealand from any location within 24 hours. The majority of CDC orders are delivered "overnight". No orders are delivered within 1 hour of receipt of that order as a matter of course.
- 12.11. Wholesaler and pharmacy businesses are reliant upon technology for efficiency of ordering systems and stock management. This reliance on technology has increased significantly over recent years. CDC receives 91% of orders electronically (EDI, with CDC's computer system updating the pharmacy system with stock availability information upon receipt of orders). Manual orders are received from hospitals and from supplier representatives on behalf of pharmacies. Virtually all day to day orders from pharmacies are received electronically. PWL also receives 90% of pharmacy orders electronically. All pharmacies in New Zealand have a computerised stock management system. The accuracy this provides allows the pharmacy to anticipate needs and order in advance (the system can predict product requirements based on the history of prescriptions filled for its patients and essentially knowing when a patient is likely to return for their next prescription) has resulted in most pharmacies using an overnight delivery facility. Many pharmacies due to their rural locations or distance from their nearest wholesaler do not have a practical option for same day delivery. Pharmacies in main centres who do receive same day deliveries are generally receiving them at times arranged by the wholesaler to spread the workload within the wholesaler warehouse and are therefore receiving them same day "out of habit" rather than out of necessity.
- 12.12. In Decision 417 the Commission concluded that, if it were not for the requirement for same day delivery services to meet urgent situations, it may have defined the markets more broadly than those adopted in the earlier Stevens/CPL Decision. The Applicants believe that the market has now changed to the extent that the emphasis on the requirement for same day delivery services and thus the conclusion of three separate geographic markets is no longer appropriate. It appears the Commission may have been influenced by what seems to be a limited survey of pharmacists in the greater Wellington region. At the time of Decision 417 Wellington pharmacies had the benefit of having the choice of two wholesalers present in the city which were able to supply on the same day. If the survey had been more widely extended, the Applicants believe the result would have been different. Additionally, the Applicants believe that since then the expectation of the pharmacies has also changed.

12.13. The Applicants believe that if there is a separate market for the supply of pharmaceutical products to hospitals, that it is to a New Zealand wide market, given the experience of CDC in currently supplying [] private hospitals (spread from Auckland to Invercargill) and [] DHBs [].

The market for Organisational Services to Buyer Groups

12.14. In Decision 417 the Commission determined that a New Zealand wide geographic market for the provision of Banner Group services was appropriate. The Applicants consider that assessment is still appropriate and also applicable to Buyer Groups.

Market definition summary

12.15. The Applicants consider that the following markets are relevant for the purposes of analysing the relevant competition obligations:

- the national market for the provision of wholesaling of prescription and OTC pharmaceutical products to pharmacies ;
- the national market for the provision of wholesaling bulk pharmaceutical products to hospitals;
- the national market for the provision of Buyer Group organisational services to retail pharmacies.

13. Where relevant, please explain how products or services are differentiated within the market(s).

The Applicants believe this section has been addressed in its responses to section 12 above.

VERTICAL INTEGRATION

14. Provide details of any creation or strengthening of vertical integration that would result from the proposed merger. Please use organisational charts or diagrams to illustrate the structure of the ownership and/or control of the participants and the vertical relationships in question.

As neither CDC nor PWL has any shareholding in manufacturers or pharmacies they have no influence over the full supply chain from manufacture to the patient. Therefore the Applicant does not believe there will be any vertical integration as a result of the merger.

PART 4: COUNTERFACTUAL

15. In the event that the proposed merger does not take place, describe what is likely to happen to the business operations of the merger parties and the market/industry.

15.1. The most likely short term counterfactual is that both CDC and PWL will continue to operate as they are, however, there is a concern of dominance within the industry by ProPharma and its associated EBOS owned companies and the impact this could have on the supply chain.

15.2. The Applicant considers it unlikely that an outside party would be interested in acquiring either CDC or PWL individually, given the existing market dynamics.

PART 5: COMPETITION ANALYSIS

EXISTING COMPETITORS

16. Identify all of the relevant competitors in the market(s), including near competitors and importers in the market(s), and describe how they all compete in the market(s).

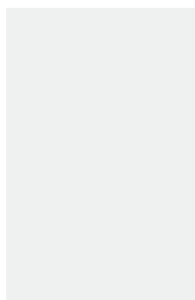
16.1. The current competitors of CDC and PWL in the market are:

- EBOS through ProPharma and Pharmacy Wholesalers Russell which carries out the wholesaling of prescription and OTC pharmaceutical products to retail pharmacies in New Zealand from 9 warehouses throughout the country. It also supplies private and public hospitals, has a contract distribution business (Healthcare Logistics) for prescription and OTC pharmaceutical products for a number of multi-national pharmaceutical suppliers and provides marketing and logistic services to the Vantage Buying Group of pharmacies.
- Pharmacy Wholesalers (Bay of Plenty) Ltd. PWL BOP carries out the wholesaling of prescription and OTC pharmaceutical products to retail pharmacies in the upper North Island, including Auckland, from a warehouse located in Tauranga.
- Many pharmaceutical suppliers which supply prescription and OTC pharmaceutical products (the same products as supplied by the parties mentioned above) also supply **direct** to retail pharmacies in New Zealand. Some examples are Douglas Pharmaceuticals Ltd, Mylan New Zealand Ltd, Pfizer New Zealand Ltd, Actavis New Zealand Ltd and Pharmabroker Sales Ltd.
- OneLink Limited (originally Health Support Limited) is a 100% subsidiary of EBOS. This company (as Health Support Limited) was a supplier of prescription and OTC pharmaceutical products to retail pharmacies and hospitals, but now as OneLink it supplies hospitals only. Recently it was announced as the preferred supplier for the supply of hospital devices and other hospital consumables to DHBs, this may encompass pharmaceuticals to certain hospitals also.

17. Outline the estimated market shares in terms of sales, and, where relevant, volume and productive capacity, of the merger parties and competitors identified above. Please include:

- 17.1 the estimated total value of the domestic market; and
- 17.2 the source of the data provided.

Market share information may be illustrated by the use of the table below:



Pharmacy supply

RANK	COMPETITORS (INCLUDING MERGER PARTIES)	ESTIMATED REVENUE (rounded)	ESTIMATED % OF MARKET SHARE BY REVENUE
1	ProPharma	[]	[]
2	CDC Pharmaceuticals	[]	[]
3	PWL Bay of Plenty	[]	[]
4	PWL Central	[]	[]
5	Directs and Others	[]	[]
Totals		[]	100%

- 17.1. The information in the graph is sourced from IMS Health (NZ) Ltd, an international company that provides information on market share. The revenue data provided represents the wholesale market in NZ for pharmaceutical and OTC products supplied via wholesalers or direct from manufacturer/suppliers. This data excludes any sales to hospitals (both private and DHBs). The data above represents the year as at 31 March 2014 and a copy of the relevant IMS report is annexed as **Annexure B**.
- 17.2. The market share information set out in the table above indicates that post merger the merged entity will have a market share of [], which given the three firm concentration ratio post merger would be [], would be marginally outside the Commission's market share and concentration indicators. Notwithstanding the figures set out in this paragraph, the Applicant believes that other market factors outlined in this application support clearance being given for the proposed merger.

Hospital supply

- 17.3. IMS Health (NZ) Limited has only recently begun publishing information on pharmaceutical sales to hospitals. A copy of the most recent report to 31 December 2013 is attached as **Annexure C**. Its latest information is summarised in the table below.

RANK	COMPETITORS (INCLUDING MERGER PARTIES)	ESTIMATED REVENUE	ESTIMATED % OF MARKET SHARE BY REVENUE
1	ProPharma/OneLink	[]	[]
2	CDC Pharmaceuticals	[]	[]
3	PWL Bay of Plenty	[]	[]
4	PWL Central	[]	[]
5	Directs and Others	[]	[]
Totals		[]	100%

- 17.4. Given that the Applicants do not have access to the breakdown in market share between ProPharma/OneLink and Directs and Others sales, they are not able to accurately assess the three firm concentration ratio post merger, however [] they anticipate that their combined market share post merger will [] below the 20% threshold and therefore will come within the Commission's market share and concentration indicators.

18. To what extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected? Where relevant please include a full discussion and examples of:

18.1 the ease with which customers may switch between suppliers, and, if so, how readily;

18.2 any local or overseas firms that are not currently producing the product, or providing the service in the market, but could enter the market quickly (using essentially their existing productive capacity) in a response to an attempt by suppliers to raise prices or reduce output or quality (near competitors and importers); and

18.3 the extent to which existing competitors, near competitors and importers could expand in the market, and any difficulties that they might face in doing so.

18.1. The merged entity will be significantly constrained by existing competitors because of the following factors:

- Ease of switching wholesalers and national presence of main competitor;
- The ability for pharmacies to obtain direct supply from manufacturers (even with minimum quantity buys which can be addressed by creating a buying group);
- The price setting actions of PHARMAC provides a significant constraint on the market as it determines the subsidy (and therefore pharmacy reimbursement) price for all prescription drugs;
- Supermarkets, The Warehouse and other retailers will continue to constrain the OTC market.

18.2. There are no barriers for a customer (pharmacy or hospital) to switch from one pharmaceutical wholesaler to another. It is as simple as changing a code and phone number in their computer systems (5 minute job) and the orders will be immediately sent to another supplier. Some pharmacies will already be purchasing from more than one wholesaler and as the products supplied are the same, it is very easy to "chop and change".

18.3. There are no real barriers to entry to the market and as such should one of the Australian wholesalers wish to enter the market they could do so quite simply and relatively quickly. The Australian wholesalers Sigma, API and Symbion Health (now owned by EBOS) are all familiar with the New Zealand Pharmaceutical Wholesale market.

18.4. ProPharma already has a substantial share of the New Zealand market and a wide presence and could expand its market share very easily. A near competitor is Green Cross Health Limited which already provides wholesale supply of OTC products to its branded (Unichem, Life, Amcal, Radius) stores. It would be very easy for it to expand its existing wholesale supply to include ethical (prescription) products.

18.5. The Direct supply from manufacturers to pharmacies is also an area of competitor action that could expand. This would be very easily achieved and currently direct supply amounts to [] of the market.

POTENTIAL COMPETITION

CONDITIONS OF ENTRY

19. Please explain the requirements for new entry and/or importers in the relevant market(s), including:

- a breakdown of the estimated costs;
- anticipated timeframes;

- regulatory requirements;
- frontier requirements (e.g. tariffs, import licensing, quarantine requirements); and
- business requirements involved.

Please provide the source for any data used.

- 19.1. There are no barriers to new entry in the pharmaceutical wholesale market. Initial costs apply to setting up a facility (lease premises, computer system, staffing etc.) but they are no different to establishing any other business. There is a requirement to obtain a license from the Ministry of Health to sell medicines by wholesale, however the conditions are not onerous and require upon payment of a fee (\$1,077) the applicant to satisfy various quality related criteria as to the standard of premises, security, recording of transactions and documentation of procedures. The requirements above are the same all existing wholesalers are required to meet annually.
- 19.2. At a practical level, to operate, a wholesaler needs suitable storage space for products and arrangements for delivery of products (generally by courier) and would in all likelihood invest in a computerised stock and sales system.

20. Include a full discussion on:

- 20.1 any factors that could impede entry; and
- 20.2 what might prompt new entry post-merger.

- 20.1. The likely impediment to entry is the low margins within which the industry operates and therefore the need for large turnover to create economies. That being said, should prices be increased by any market incumbents this could prompt a new entrant or entry of a near competitor.
- 20.2. Supermarket wholesalers (Progressive and Foodstuffs) are very aware of the pharmaceutical wholesale market and could enter very easily (merely an extension of their current product range). Progressive is already establishing pharmacies within its larger supermarkets. Countdown pharmacies currently exist. Three are located in Auckland, one in Palmerston North, one in Lower Hutt, one in Wellington and one in Christchurch.

LIKELIHOOD, EXTENT AND TIMELINESS OF ENTRY (THE LET TEST)

21. Please name any likely businesses (including overseas businesses) you are aware of that do not currently supply the market but which you consider could supply each of the relevant market(s). Discuss the likelihood of such entry.

- 21.1. The likely businesses that could enter the market have been mentioned above, the likelihood of entry is discussed below.
- 21.2. Green Cross Health Limited – assess as highly likely as already established as an OTC supplier and would take little effort to expand this to prescription drugs.
- 21.3. Australian Wholesalers – assess as unlikely, they have tried the New Zealand market in the past and sold out. Symbion is now owned by EBOS so has a group entry to NZ and is unlikely to compete with ProPharma which is also owned by EBOS.
- 21.4. Direct supply from existing manufacturer – history has shown that manufacturers move from direct supply to the wholesale model easily. In Australia all Pfizer products are sent direct to pharmacies. This supply route is used by several manufacturers in the UK.

- 21.5. Progressive and Foodstuffs – similar to Green Cross Health Limited in that they are already established as a supplier of many OTC products so expansion into prescription drugs would take very little effort.

22. To what extent do you consider that potential entry would be sufficient to constrain the merged entity in the markets affected?

- 22.1. All the potential market entrants above are a threat to the merged entity and provide significant constraint. However the main constraint is that which already exists being the substantial player in the existing market, ProPharma.

23. How long would you expect it to take for entry to occur, and for market supply to increase, in respect of each of the potential entrants named in question 21 above? Provide reasons for your estimates.

- 23.1. Should the businesses above decide to enter the market it is expected timeframes to be:
- Green Cross Health Limited – within 3 months, as it already has supply relationships with most manufacturers.
 - Australian Wholesalers – 6 to 9 months, as while they have relationships with most manufacturers (Australia and New Zealand buy from same suppliers) they would need to locate premises, set up the warehouse and staff. They could use their existing IT systems.
 - Direct supply from existing manufacturers – overnight, as they in all likelihood already have relevant pharmacy details in their systems.
 - Progressive and Foodstuffs – 1 to 2 months, as they already have relationships with most manufacturers and already have distribution systems in place.

COUNTERVAILING POWER OF BUYERS

24. To what extent do you consider that the merged entity would be constrained in its actions by the conduct of buyers in the markets affected? Where relevant, please include:

- 24.1 a full discussion on the ability of buyers to self supply or import, and the alternative sources of supply available to buyers; and
- 24.2 evidence of buyers seeking alternative supply and/or switching suppliers.

- 24.1. The New Zealand prescription drug market is essentially governed by PHARMAC, which determines the schedule price a pharmacy is reimbursed and by the Ministry of Health (Medsafe) and registers products as suitable for the New Zealand market. The DHBSS (District Health Board Shared Service) essentially has price control. PHARMAC operates a sole tender supply model on the vast majority of prescription drugs. This effectively results in just one product being prescribed for a certain condition a patient has. A pharmacy is reimbursed the subsidised price of that dispensed product (price set by PHARMAC) plus a margin for stockholding (4% on drugs under \$150 and 5% on drugs over \$150) plus a service fee for dispensing.
- 24.2. Wholesalers have no influence on the price setting mechanisms or on the sole supply decisions.

- 24.3. While the price charged for wholesaling can be set by the wholesalers, the effect of the DHBSS reimbursement to Pharmacy provides an effective constraint on the amount wholesalers can charge.
- 24.4. Should a wholesaler increase its prices too far above the pharmacy reimbursement level, pharmacies will look to alternate wholesalers or to source themselves direct from the manufacturer.
- 24.5. Of course overriding this is the constraint that it is the doctor who writes the prescription the pharmacy fills. Wholesalers have no influence in this area.

25. If you consider that there is a constraint from buyers, identify the top five buyers by sales and/or volume (including overseas companies/importers) in the relevant market(s). Where there are significant differences in the size of the buyers please provide details for five medium and five small buyers.

- 25.1. Yes there are constraints from buyers. It is a competitive industry and buyers are free to move to ProPharma. Banner groups have sway with suppliers with OTC pricing.
- 25.2. PHARMAC sets the prices for all subsidised pharmaceutical products, which incorporates substantially all prescription drugs.

COORDINATED MARKET POWER

26. Identify and discuss the various characteristics of the market that, post-merger, you consider would either facilitate or impede coordination.

- 26.1. The pricing policies of PHARMAC effectively control 85% of the pricing chargeable by the proposed merged entity. In addition, the Ministry of Health and DHBSS have significant power within the relevant markets.
- 26.2. Given PHARMAC's significant presence in the market, opportunities for coordination between competitors are negligible.
- 26.3. With regard to the OTC product market, which is a small percentage of the Applicants' business, the presence of a significant number of other parties within the market, such as supermarkets, the Warehouse, other retailers and service stations mean that coordination is highly unlikely.

EFFICIENCIES

27. If applicable, provide a description of any efficiencies that you believe the acquisition could bring. Would such efficiencies enhance rivalry, or offset the impact of a lessening of competition? Please include a full discussion on:
- 27.1 how the merger would facilitate the realisation of efficiency improvements. Specify the steps the combined entity anticipates it would take, and the timeframe needed, to achieve the efficiencies. Where relevant, include a discussion of the risks and costs involved;
 - 27.2 the magnitude of the efficiencies, whether the impact would be on fixed, variable or other costs, and generally how the cost structure of the merged entity would change;
 - 27.3 whether such efficiencies could be realised without the merger, or over a longer timeframe; and

27.4 whether, and the extent to which, such efficiencies would be passed on to the customers of the merged entity.

- 27.1. Given the low margin, high volume nature of the industry we expect little real efficiency gains from the merger. There will be some back office savings through consolidation of accounting functions and IT systems.
- 27.2. The Applicant sees the merger as enhancing rivalry and competition within the industry. The industry is dominated by one significant player (ProPharma with EBOS as ultimate owner). The Applicant believes the merger is necessary to increase the scale and reach of competition to ensure the customer continues to have a realistic choice.
- 27.3. []

OTHER FACTORS

28. Where relevant, provide a description of any other features of the market(s) that should be taken into account in considering the effect of the proposed merger.

- 28.1. The constraints from the existing competitors (predominantly ProPharma), the constraint that potential competitors pose (Green Cross Health Limited, Progressive and Foodstuffs), the low barriers to entry, the price setting policies of PHARMAC, funding powers of DHBSS and the direct supply of products by the manufactures ensure that the merger will not create substantial market power in the market for wholesaling of prescription and OTC pharmaceuticals in New Zealand. To the contrary, the merger is necessary to ensure the incumbent majority player in the market does not create an overwhelmingly dominant position thus significantly lessening competition.

PARTICIPANTS OR INTERESTED PARTIES	Guild of New Zealand		
	PHARMAC	[]	[]
	DHBSS	[]	[]

30. Please provide a copy of the most recent annual report for each of the merger parties. If an annual report is not available, please provide a copy of the audited financial statements of the merger parties (profit and loss account, showing total turnover and profit before tax, and balance sheet). If the merger only relates to a segment of the business of the merger parties, please also provide a copy of any management accounts for the relevant business segment.

Please refer to **Annexures D & E**

PART 7: CONFIDENTIALITY

31. If you wish to request confidentiality for specific information contained in or attached to the notice, please state why you consider the information to be confidential and state the reasons for your request in terms of the criteria set out in the Official Information Act 1982.

32. Provide a separate schedule of all confidential information claimed in the application.

31.1. Confidentiality is sought in respect of the information in this application that is contained in square brackets and highlighted in red. In addition, confidentiality is sought in respect of:

- ***Annexures A, B, C, D and E***

31.2. Confidentiality is sought for the purposes of section 9(2)(b) of the Official Information Act 1982 on the grounds that:

- the information is commercially sensitive and contains valuable information which is confidential to CDC and/or PWL; and
- disclosure would be likely to unreasonably prejudice the commercial position of CDC and/or PWL, as the parties providing the information.

31.3. The Applicants also request that they are notified of any request made to the Commission (including under the Official Information Act 1982) for the confidential information, and that the Commission seeks the Applicants' views as to whether the information remains confidential, and commercially sensitive at the time those requests are being considered.

31.4. The foregoing applies equally in respect of any information subsequently provided to the Commission that is expressed to be confidential.

32.1 All confidential information included in the body of this application is contained in square brackets and highlighted in yellow and a redacted public version is supplied separately.

THIS NOTICE is given by:

CDC Pharmaceuticals Limited

I, Mike Rhodes, an officer of CDC Pharmaceuticals Limited am authorised to make this application.
I hereby confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to CDC which is relevant to the consideration of this application/notice has been supplied; and all information supplied is correct as at the date of this application/notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this _____ day of _____ 2014 .

Mike Rhodes
Chief Executive Officer
CDC Pharmaceuticals Limited

THIS NOTICE is also given by:

Pharmacy Wholesalers (Central) Limited

I, Warren Davis, an officer of Pharmacy Wholesalers (Central) Limited am authorised to make this application. I hereby confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to PWL which is relevant to the consideration of this application/notice has been supplied; and all information supplied is correct as at the date of this application/notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this _____ day of _____ 2014 .

Warren Davis
Chief Executive Officer
Pharmacy Wholesalers (Central) Limited

Annexure A
Amalgamation Agreement

Annexure B
IMS Health Report – Pharmacies

Annexure C
IMS Health Report – Hospitals

Annexure D
CDC Annual Report

Annexure E
PWL Annual Report