PHILIPPINE COMPETITION COMMISSION
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25/F Vertis North Corporate Center I,
North Avenue, Quezon City 1105
www.phcc.gov.ph
queries@phcc.gov.ph
(02) 771 9722

In the Matter of the Proposed Acquisition by GlaxoSmithKline Consumer Healthcare Holdings, Ltd. of Pfizer Inc.'s Consumer Healthcare Business
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MAO Case No. M-2019-005

COMMISSION DECISION NO. 20-M-005 /2019

STATEMENT OF THE CASE

1. For the Philippine Competition Commission's (the "Commission") approval is the transaction involving the proposed acquisition by GlaxoSmithKline Consumer Healthcare Holdings, Ltd. ("GSK CH") of Pfizer Inc.'s ("Pfizer") Consumer Healthcare Business ("Pfizer CH") (GSK CH and Pfizer are collectively referred to as the "Parties") ("Proposed Transaction").

2. The acquiring entity, GSK CH, is an indirect subsidiary of GlaxoSmithKline Plc. ("GSK"). GSK is a multinational pharmaceutical company based in the United Kingdom.[1]

   2.1. GSK and its subsidiaries ("GSK Group") operate in multiple business segments including pharmaceuticals, vaccines, and consumer healthcare.

      2.1.1. The consumer healthcare ("CH") business segment of GSK Group focuses on a portfolio of CH or *over-the-counter* products, which can be purchased without the need for doctor's prescription. CH products include medicines intended for pain relief, respiratory health (coughs and colds), oral health, nutrition and digestive health, and skin health.

      2.1.2. GSK Group's CH business segment is present in the Philippines through Duncan Consumer Healthcare Philippines, Inc., GlaxoSmithKline Consumer Healthcare Philippines, Inc., and SmithKline Beecham Research Ltd.

3. The acquired business is Pfizer CH. Its parent entity, Pfizer, is a US-based multinational corporation organized into two (2) business segments:

[1] GSK was formed from the merger of SmithKline Beecham and GlaxoWellcome in 2000. *See* GSK today: 2000-present available at https://www.gsk.com/en-gb/about-us/our-history/gsk-today-2000-present/ (last accessed 22 June 2019).

(1) innovative health and (2) essential health. Pfizer CH operates under the essential health business segment.

3.1. Pfizer CH is responsible for developing, manufacturing and marketing non-prescription medicines, vitamins and nutritional products in five (5) major areas: pain management, gastrointestinal health, respiratory, dietary supplements, and personal care. It also markets prescription products that have become over-the-counter.[2]

3.2. Pfizer Philippines, as the sole subsidiary of Pfizer in the Philippines, carries out Pfizer CH's local business.

4. In the Philippines, the Proposed Transaction will be a pure acquisition of assets including inventories, stock-in-transit, equipment, contracts, intellectual property, and goodwill, among others.

5. As consideration for the transfer of Pfizer CH, Pfizer, Inc. will obtain non-controlling shares representing 32% ownership interest in GSK CH.[3] Post-transaction, GSK will have 68% ownership and control over GSK CH.

RELEVANT MARKETS

6. To determine whether the Proposed Transaction is likely to prevent, restrict, or lessen competition, the competitive effects of the Proposed Transaction within the identified relevant markets should be assessed.

6.1. A relevant market is one that could be subject to an exercise of market power that would likely result in significant harm to competition. It refers to the market in which a particular good or service is sold. A relevant market has two (2) dimensions: product market and geographic market.

6.2. Relevant product market comprises all those goods and/or services that are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or services' characteristics, their prices, and their intended use.

6.3. Market investigation conducted by the Mergers and Acquisitions Office ("MAO") indicated that GSK and Pfizer overlap in the business of manufacturing of CH products, specifically in respiratory health (i.e., cough medicines), pain relief (analgesics), and nutritive and digestive health.[4]

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2 Appendix 2.4 of Pfizer Notification Form.

3 Stock and Asset Purchase Agreement by and among Pfizer Inc., GlaxoSmithKline PLC and GlaxoSmithKline Consumer Healthcare Holdings Limited dated 19 December 2018.

4 While the Parties both supply skin health products, a closer look at the products reveals that Pfizer's skincare product is Chapstick, which is a lip balm. Given that GSK has no lip skin care product, the case team has excluded skin health products from the assessment.

6.4. In determining the relevant product market, among the factors considered by MAO was the fact that pharmaceutical products are highly differentiated through various classifications, such as chemical composition, requirement for doctor intervention via prescription, market positioning and end-users. Results of the market investigation indicate that:

6.4.1. Prescription drugs do not compete with CH drugs;[5]

6.4.2. The Anatomical Therapeutic Chemical Classification cannot be used as the sole basis for defining the relevant market among CH drugs;[6]

6.4.3. CH drugs typically compete in terms of market positioning, which pertains to the intended use of the product as marketed by a manufacturer in the advertisements and product packaging, among other parameters of competition; and

6.4.4. There are separate markets for pediatric and adult CH products.

7. In order to properly delineate the relevant product market, MAO looked into several factors, including demand-side substitution and supply-side substitution.

7.1. Demand-side substitutability refers to the extent to which customers would likely switch from one product to another in response to changes in prices, quality, availability, or other features.[7]

7.2. On the other hand, supply-side substitutability seeks to determine whether entities not engaged in producing the subject product could easily supply the subject product within a short period of time without incurring substantial sunk costs.[8]

8. During the review, MAO found no supply-side substitutability due to existing regulatory requirements.

8.1. For a manufacturer to engage in the production of the products in question, it has to apply for Certificate of Listing of Identical Product Registration ("CLIDP"), which, according to market participants, takes

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5 Market feedback indicated fundamental differences between prescription drugs and CH drugs such as: (1) prescription drugs are subject to a higher degree of regulatory restrictions; the Parties transact prescription drugs separately from their respective units who handle CH products; and (3) the end-consumers of CH products are consumers who purchase on the basis of self-assessed symptoms while the end-consumers for prescription drugs are required to secure doctor's prescription before being able to purchase the product.

6 The ATC categorize medicinal products according to their indication, therapeutic use, composition and mechanism of action. However, market feedback suggests that CH drugs may compete with products that are not classified under the same ATC code.

7 Merger Review Guidelines, 5.4.

8 Merger Review Guidelines, 5.18.

significant amount of time to secure. Furthermore, CLIDP restricts the introduction of improvements on the product covered by existing Certificate of Product Registration ("CPR"), which in turn imposes a barrier for firms to differentiate themselves from the existing market participants enough to effectively compete in the market.[9]

8.2. Moreover, market feedback revealed that it typically takes about two (2) to three (3) years for a new participant to complete all the documentation necessary to begin product launch.

9. The consumers' perspective on product characteristics and intended use was also considered during the review. While it was noted that the Parties do not sell directly to end-consumers but sell primarily to retailers (*i.e.,* pharmacies and hospitals), such retailers, however, purchase in response to their end-user's demand.[10] Thus, in examining demand-side substitutability, the views of end-users/consumers were considered.

10. Based on the foregoing, it was observed that the Parties compete in the following separate product markets:

10.1. Adult cough medicines;

10.2. Pediatric cough medicines;

10.3. Pediatric analgesics; and

10.4. Pediatric nutritive and digestive health (vitamin and multivitamin) products.

Adult Cough Medicines ("ACMs")

11. During the review, it was found that there are two (2) types of cough medicines that seek to remedy the most commonly occurring cough (i.e., dry cough and productive cough). Dry cough is usually remedied by taking antitussives or cough suppressants. Productive cough can be relieved with the help of expectorants.[11]

12. The parties were found to have product overlaps in adult cough suppressants and expectorants. GSK CH manufactures and distributes the expectorant *Ambrolex*[12] and the suppressant *Sinecod*. On the other hand, Pfizer CH manufactures the expectorant *Robitussin* and the suppressant *Loviscol*.

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9 *Id.* at 27.

10 Interview with [redacted]; Market Inquiry Response from [redacted]; Market Inquiry Response from [redacted]

11 MIMS Philippines website.

12 While GSK considers Ambrolex as a prescription drug (Attachment 7-2 of GSK submission dated 22 March 2019), the Monthly Index of Medical Specialties ("MIMS"), a database for medicines, considers Ambrolex as an OTC product. Hence, MAO included Ambrolex as CH drug.

Table 1. Parties' Overlapping Adult Cough Medicine Products

ADULT COUGH MEDICINE	PARTIES	
	GSK CH	Pfizer CH
Expectorant	Ambrolex[13]	Robitussin[14]
Suppressant	Sinecod[15]	Loviscol[16]

13. While suppressants and expectorants have different active ingredients and classified under different indications, the market investigation results in this case yielded no sufficient evidence to separate the product markets for suppressants and expectorants due to the following:

    13.1. *Market positioning*. Despite the abovementioned differences, it was observed that the packaging, TV commercials, and advertisement banners of the parties' expectorants and suppressants merely indicate that these products are intended to ease cough and do not distinguish between suppressants and expectorants.

    13.2. *Internal documents on competing products*. A review of the internal marketing and planning documents submitted by the parties showed that [redacted] identifies Robitussin as a direct competitor of *Sinecod* in the Cough Category market,[17] while [redacted] considers *Sinecod* as a direct competitor of [redacted] Robitussin.[18]

    13.3. *Consumer preferences*. In [redacted], GSK cited a high dry cough incidence in the Philippines (41%), and yet the share of antitussive products are at just [redacted] of the total cough market.[19] This data indicates that consumers do not distinguish between an antitussive and an expectorant.

14. Thus, there is a broader market for ACMs where it can be said that consumers regard expectorants and suppressants as substitutable cough medicines.

15. In the ACM market, MAO found that the Proposed Transaction will lead to a merger between the [redacted] top players in the market for adult cough medicines in the Philippines. This will combine the market shares of the parties to [redacted],[20] significantly lower than the market share of the market-leader, Unilab at [redacted]. The HHI for the ACM market post-

13 Ambroxol HCl is the generic name for *Ambrolex*.
14 Guaifenesin is the generic name for *Robitussin*.
15 Butamirate Citrate is the generic name for *Sinecod*.
16 Carbocisteine is the generic name for *Loviscol*.
17 Page 110 of GSK Notification Form Appendix 6.3 (A).
18 Page 43 of Pfizer Consumer OTC Market Review, Pfizer RFI dated 11 March 2019.
19 Appendix 4 (c) of Response to Phase II RFI dated 07 May 2019.
20 Market shares were determined using IQVIA data. Pfizer (Robitussin and Loviscol) at [redacted] and GSK (Sinecod and Ambrolex) at [redacted]

Transaction is [redacted], with an increase of 405.31 index points from, from a pre-Transaction HHI at [redacted][21]

Pediatric Cough Medicines ("PCMs")

16. Similarly, the parties compete in PCMs. GSK CH manufactures and distributes the expectorant *Ambrolex*[22] and the suppressant *Sinecod*. On the other hand, Pfizer CH manufactures the expectorants *Robitussin* or *RobiKids* and the suppressant *Loviscol*.

Table 2. Parties' Overlapping Pediatric Cough Medicine Products

PEDIATRIC COUGH MEDICINE	PARTIES	
	GSK CH	Pfizer CH
Expectorant	Ambrolex[23]	RobiKids[24]
Suppressant	Sinecod (syrup)[25]	Loviscol (syrup)[26]

17. Consistent with MAO's findings on ACMs, it was found that there is likewise a broader market for PCMs, where the parties market expectorants and suppressants similarly as cough medicines and where consumers do not distinguish between expectorants and suppressants.

18. During the review, a broader market that includes both ACMs and PCMs was considered. However, fundamental differences between ACMs and PCMs such as in dosage, format, and marketing indicate that they constitute separate markets.[27]

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21 Market shares are an indication of the competitive significance of each merging firm in the relevant market. (Merger Review Guidelines, Sec. 6.1) They provide an indication of a firm's incentive to coordinate its actions with rivals and its ability to exercise market power. The Herfindahl-Hirschman Index ("HHI") was considered to measure market concentration. When using HHI, the post-merger level of the HHI and the increase in the HHI resulting from the merger are both considered. A higher HHI indicates more concentration in the market. Conversely, a lower HHI indicates less concentration. (Merger Review Guidelines, Secs. 6.7-6.8) The HHI is between a range of close to zero (which indicate a market with many firms, each having a tiny market share) and 10,000 (which indicates a monopoly).

22 While GSK considers Ambrolex as a prescription drug (Attachment 7-2 of GSK submission dated 22 March 2019), the Monthly Index of Medical Specialties ("MIMS"), a database for medicines, considers Ambrolex as an OTC product. Hence, MAO included Ambrolex as CH drug.

23 Ambroxol HCl is the generic name for *Ambrolex*.

24 Guaifenesin is the generic name for *Robikids*.

25 Butamirate Citrate is the generic name for *Sinecod*.

26 Carbocisteine is the generic name for *Loviscol*.

27 *See also* Case No. Comp/M.4314 - *Johnson & Johnson/Pfizer Consumer Healthcare*, where the EU commission noted that "adjustment of the dosage is only a theoretical option in many cases. Gel capsules and tablets, for example cannot be broken in order to adjust the dosage for children." In the same case, however, EU commission stated that "there are specific products that are used for children (i.e. syrups and suppositories), whereas adults generally use different means of administering these products (i.e. tablets)."

19. In the PCM market, the Proposed Transaction will result in a merger between the [redacted] top manufacturers and will combine their market shares to [redacted]. The HHI for the PCM market post-Transaction is [redacted], with an increase of only 86.18 from a pre-Transaction HHI at [redacted].

Pediatric Analgesics ("PAs")

20. Analgesics or painkillers[28] are medicinal products intended for pain management. Analgesic drugs are marketed for either general pain relief or specific types of pain relief (e.g., headaches, muscle pain).

21. During the review, it was observed that GSK CH manufactures and distributes the pediatric paracetamol *Calpol* and the topical analgesic *Voltaren*, while Pfizer CH manufactures the Ibuprofen *Advil* for adults and *Advil Suspension* for Kids.

22. GSK CH's topical analgesic (i.e., administered by applying directly to a body part) *Voltaren* was found to have limited substitutability with Pfizer CH's general analgesic (i.e., in the form of ingestible tablets), *Advil* due to the following factors: (1) active ingredients, (2) dosage, (3) pharmaceutical form, and (4) method and route of administration. Thus, *Voltaren* as a topical analgesic was not considered part of the relevant product market.

23. Considering that GSK CH, with the exception of *Voltaren*, does not participate in the adult analgesics market, the relevant product market was further narrowed down to pediatric analgesics.

24. Furthermore, while the Parties' pediatric analgesics differ in terms of active ingredients and classifications based on indications, the market positioning of the products as pain relief medicines in general indicates that Pfizer CH's *Advil Suspension for Kids*, with GSK's *Calpol* compete with each other.

25. In the PA market, the Proposed Transaction will put the merged firm at third place with a combined market share of about [redacted], with a negligible increase in the PA market HHI of 6.1 index points, from [redacted] to [redacted] post-Transaction.

Pediatric Nutritive and Digestive Health Products ("PNH Products")

26. In determining PNH Products as a relevant product market, the review considered the following product overlaps between the Parties: GSK CH's *Scott's Vitamins* for children and Pfizer CH's *Simeco* (antacid), *Caltrate* (calcium supplement), and multivitamins *Clusivol*, *Stresstab*, *Centrum Adult*, and *Centrum* Silver.

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28 Elsevier's Dictionary of Medicine and Biology.

27. The relevant product market for PNH Products was narrowed down to GSK CH's *Scott's Vitamins* and Pfizer CH's *Children's Clusivol* due to the following reasons:

    27.1. *Simeco* was excluded from the relevant product market considering that as an antacid, it seeks to relieve a specific body ailment. It is noted that between the Parties, only Pfizer manufactures antacids.

    27.2. Market feedback, however, suggests that consumers do not substitute between adult and pediatric nutritive and digestive health products.[29] Thus, Pfizer CH's *Caltrate*, *Stresstab*, *Centrum Adult*, and *Centrum Silver* are not substitutable with GSK CH's *Scott's Vitamins*.

    27.3. While GSK CH's *Scotts* is a single vitamin and Pfizer CH's *Clusivol* is a multivitamin, market feedback suggests that consumers generally do not distinguish between single vitamin and multivitamin products.[30]

28. In the PNH market, the Proposed Transaction will merge the [redacted] top players, with a resulting market share of [redacted]. The PNH market HHI will increase by 66.96 index points, from [redacted] to [redacted].

29. Based on the foregoing findings, it was resolved that the relevant product markets are the following:

    29.1. CH Adult cough medicine;

    29.2. CH Pediatric cough medicine;

    29.3. CH Pediatric analgesics; and

    29.4. CH Pediatric nutritive and digestive health (vitamin and multivitamin) products.

30. The second dimension of the relevant market is the geographic market. It comprises the area in which the entity concerned is involved in the supply and demand of good and services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighboring areas because the conditions of competition are different in those areas.

31. After due consideration of the market investigation results, MAO defined the geographic relevant market for competitive assessment to be national in scope, due to lack of zoning restrictions for the CH market, which can hinder demand-

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29 Nutritionist-dietitians confirm that adult nutritive and digestive health products are not advisable for children as the dosage, particularly the vitamin and mineral content, for adults can be toxic for pediatrics.

30 Interview with [redacted]; Interview with [redacted]

side substitution at a national level. In addition, the practice of retailers and distributors, where they procure CH products from manufacturers to be distributed nationwide, further supports this point. Moreover, it was found that overseas supply of CH products is highly unlikely due to regulatory restrictions[31] imposed on foreign manufacturers who intend to operate the Philippine market.

32. The Commission affirms the foregoing findings by MAO in relation to the relevant market. Thus, the relevant markets (the "Relevant Markets") for purposes of the competitive assessment are the following:

    32.1. CH Adult Cough medicine sold in the Philippines;

    32.2. CH Pediatric Cough medicine sold in the Philippines;

    32.3. CH Pediatric Analgesics sold in the Philippines; and

    32.4. CH Pediatric Nutritive Health (vitamins) products sold in the Philippines.

COUNTERFACTUAL

33. In assessing the competitive effects of a merger or acquisition, the Commission compares the competitive conditions that would result from the acquisition with the conditions that would have prevailed without the transaction (the "counterfactual").[32]

34. In this case, the counterfactual adopted by the Commission is one where (1) GSK CH will not acquire Pfizer CH and the Parties will continue to conduct their respective businesses separately, and (2) the present distributors and retailers will continue to exercise the same bargaining power in availing discounts from the Parties.

COMPETITIVE ASSESSMENT

35. To evaluate the possible effects of the Proposed Transaction, the Commission assessed the potential: (1) unilateral effects in the different relevant markets which may result in increase in prices and reduction in innovation, (2) tying and bundling of products, and (3) coordinated effects which may harm competition.

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31 Foreign players can enter the market for as long as they obtain a License to Operate (LTO), a Certificate of Product Registration (CPR) or a Certificate of Identical Product Registration. Interview with [redacted]

32 PCC Merger Review Guidelines, Sec. 4.12.

Unilateral Effects: Loss of Actual Competition Resulting in Increase in Prices

36. During the market investigation, it was observed that the existing parameters of competition between the manufacturers of CH medicine are based mainly on (1) brand loyalty, as enhanced by advertising, and (2) prices.

    36.1. Results of a survey commissioned by MAO revealed that the top consideration of consumers when choosing CH medicine is the brand's effectiveness based on prior experience. This suggests a tendency for consumers to remain loyal to a brand of choice.

    36.2. MAO's research revealed that 97% of consumers go to the drugstores or pharmacies with a brand in mind[33] such that manufacturers would want to increase brand awareness in order to increase their customer base, normally, by competing through product advertisements.

    36.3. The survey results also revealed that price is the second highest consideration for consumer when choosing CH medicine.[34] Further, the presence of generic CH alternatives and pharmacies which operate primarily as generic medicine retailers (*e.g.*, TGP and Generika) is evidence that suggests that there exists a price-sensitive consumer group in the market.[35]

        36.3.1. According to [redacted], it normally compares the pricing of its products with major market players.[36] [redacted] on the other hand admittedly sets prices low compared to others in the same product category in order to be more competitive.[37]

37. With this understanding of consumer preferences in the market, the review focused on the evaluation of whether the Proposed Transaction is likely to increase prices in the Relevant Markets through: (1) a reduction of discounts to retailers; (2) an increase in the invoice price[38] that it charges to distributors and retailers; and (3) an increase in the Suggested Retail Price ("SRP") that the Parties set in the market.

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33 PCH Philippine Market Overview and Onboarding as of 28 November 2018, p.15, submitted by Pfizer on 27 February 2019, citing 2012 Consumer Health Shopper Study Report by Quintiles IMS.

34 The PCC commissioned a national survey on Households' preference and experience for over-the-counter pharmaceutical products, specifically for cough medicine, analgesics and nutritive and digestive health products on 29 May 2019.

35 Interview with [redacted]

36 LOC Business Plan 2015 Cough, p.21, Attachment 6-a of GSK's Response to Phase II RFI dated 7 May 2019; and Pricing Analysis 2017 FC 1, Plan -2018, 2019, 20202, Attachment 4-c of GSK's Response to Phase II RFI dated 7 May 2019.

37 Interview with [redacted]

38 Invoice prices are prices charged by the manufacturer to distributors or retailers.

38. In the assessment of the Parties' ability to increase prices by reducing discounts to distributors and retailers, raising the invoice prices, and increasing the SRP, the nature of the relationship between manufacturers, distributors, and retailers in the different stages of the value chain were considered. This assessment applies to all the relevant markets identified, as these products are manufactured, distributed, and retailed in the same manner. Through interviews with market participants, MAO found the following regarding the supply chain and pricing of pharmaceutical products:

38.1. Manufacturers do not sell directly to consumers. Once produced, medicines are distributed to retailers (drugstores and hospitals) for sale to the general public.

38.1.1. Distributors are responsible for bringing the finished products from the manufacturers to the retailers or the hospitals. Manufacturers may contract the services of third-party distributor and/or undertake the distribution of their own products either through a division or a subsidiary.

38.2. Manufacturers generally set the SRP per product. Retailers are encouraged to follow the SRP but are not required to implement the same. [39]

38.3. Retail prices generally do not deviate far from SRP, but are also influenced by the presence of competition. Smaller retailers tend to benchmark their prices against those of leading retail chains.

38.4. The prices at which manufacturers sell to retailers are based on the SRP, sometimes including certain discounts. Since retail prices generally do not deviate far from SRP, a retailer will earn the majority of its profit through these discounts. As a general rule, discounts are negotiated based on volume purchased and anticipated demand of the product.

38.5. Retail chains will typically negotiate and purchase their inventory as a whole from manufacturers and distributors. Stocks are stored in a centralized warehouse and distributed to individual drugstores. The variation in prices among individual drugstores depends on each company's internal policies.

38.6. Retailers procure products and brands based on consumer/end-user demand. Stores which rent out shelf space allocate space based primarily on product movement. Thus, the inventory of retailers is demand-driven.

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39 Market Inquiry Response from [redacted]

39. Evidence suggests that manufacturers in the Relevant Markets identified enjoy a degree of market power due to their product differentiation and consumer brand loyalty.

40. Based on the foregoing, the Commission finds that the merged entity has the ability to influence an increase in prices as a result of the Proposed Transaction.

    40.1. Consumer brand loyalty gives the Parties market power in the relevant market.

    40.2. The Proposed Transaction has the potential to increase the merged entities' bargaining power relative to retailers. The increased bargaining power of the merged entities may result in lower discounts, resulting the erosion of the profit margin of the retailers.

    40.3. Manufacturers have the ability to influence retailers' prices to a certain extent through the recommendation of the SRP.

41. The Commission also assessed whether the Proposed Transaction increases the incentive for the merged entity to raise prices as will be further discussed below.

Adult Cough Medicines

42. In the assessment of the Parties' incentive to increase prices of ACMs, the Commission considered the relative market position of their competitors, and the likelihood of substitution between brands in the Relevant Market.

43. According to MAO's findings, post-Transaction, the merged firm will gain a total of [redacted][40] market share for ACMs. This will place the Parties second to Unilab with a market share of [redacted], followed by Pascual Lab with [redacted], and Sanofi-Aventis with [redacted].

    43.1. Manufacturers all view Unilab's *Solmux* as the leading ACM in the market. According to [redacted], *Solmux* has a market share (in terms of volume) of [redacted] in 2018.[41]

    43.2. Pfizer CH considers *Robitussin* as *Solmux's* closest competitor, with GSK CH's *Sinecod*, Pascual's *Ascof*, and Unilab's *Tuseran* trailing behind.[42]

    43.3. [redacted] likewise considers *Solmux* as [redacted] market leader followed by Robitussin. However, it places *Ascof* as [redacted] in the market, with its *Sinecod* ranked as [redacted].

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40 Pre-merger market shares: Pfizer with [redacted] and GSK with [redacted].

41 [redacted]

42 Attachment 6-24 of Pfizer's Response to Phase II RFI dated 16 March 2019 [redacted]

44. Considering these, MAO conducted tests to estimate the merged firm's upward pricing pressure as a result of the Transaction. The upward pricing pressure is influenced by the amount of lost sales of one product, given a price increase in that product, that are likely to be diverted to other products in a market. The higher the diversion between Parties in the merged entity, there is more incentive for Parties to increase prices.

    44.1. Results reveal that the estimated customer diversion between the Parties is significantly low compared to the amount of diversion necessary to increase their incentive to raise prices.

    44.2. The amount of customer diversion between the Parties is not significant enough for there to be an incentive to increase prices as a result of the Transaction.

45. [redacted], MAO also found that the market shares are volatile and that marketing and advertising can play a role in facilitating consumers' switching to competing products.

    45.1. Unilab constantly had the leading market share for ACMs. However, their [redacted] share has been declining since 2015.

    45.2. The drops observed in Unilab's market share corresponded to short-lived but significant increases in the respective market shares of [redacted]. At some point in January 2018, [redacted] nearly overtook Unilab as the market leader, with Unilab then regaining its position shortly after. Thus, there is frequent interchanging market shares of Pfizer CH, GSK CH, Sanofi-Aventis, and Trevenodd Corp.

    45.3. A series of statistical tests were conducted on the Parties' sales data to determine specific times when significant changes in the data series can be observed. Test results show that the most significant change in the data series for GSK CH and Pfizer CH occurred after their respective advertising campaigns were launched. The volume of sales changed for most players in the market before and after this event.

    45.4. Moreover, the price ratios between different brands in the market suggest that the Parties compete closely with other players in the ACM market. Results of stationary tests[43] show that the price ratios between prices of GSK CH, Pfizer CH, Unilab, Pascual Lab, Sanofi-Aventis, and Trevenodd Corporation remain stationary over time.

46. The closeness of competition in the Relevant Market mitigates any incentive the merged entities may have to increase prices post-transaction.

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43 When the price ratio of two competing products are said to be stationary, their respective prices move together over time. Such phenomenon is explained by the Law of One Price, as competitors would try to undercut each other's prices to entice customers to buy their product.

47. Given the foregoing, the Commission finds that while the merged entity will gain ability to exercise market power, the Proposed Transaction will not likely result in enhanced incentive to increase prices in the market for ACMs because:

    47.1. Customer diversion to the products of the merged entities after a small but significant non-transitory price increase by either party is unlikely to be sufficiently high; and

    47.2. The dynamics of competition in the market revealed by the interchanging market shares, effect of brand advertising, and inter-brand price ratios are such that sufficient competitive constraints remain from other manufacturers.

Pediatric Cough Medicines

48. In assessing the incentive of the merged firm to unilaterally raise prices or reduce the discounts it gives to the distributors and retailers for pediatric cough medicine ("PCMs"), MAO looked into the market shares of the Parties pre- and post-Transaction.

49. Pfizer's submission shows that its PCM products *RobiKids* and *Loviscol* for pediatrics have a combined market share of [redacted], placing it [redacted] in the rank for PCM.[44]

50. GSK CH on the other hand does not track its cough medicine on age group level since *Sinecod*, which is in syrup form, can be used by both adults and children. However, according to Pfizer CH's submission, GSK CH ranked sixth with [redacted] of the market share for PCM.[45]

51. For Unilab, [redacted] show that *Solmux Pedia* has [redacted] market share in terms of volume.[46] However, based on Pfizer CH's submission, Unilab leads in the market for PCMs with a combined market share of [redacted].

52. According to [redacted], there are 13 alternative brands for the PCM but identified *Solmux* as an alternative brand to *RobiKids* and *Loviscol* for children.[47]

53. In addition, a review on the dynamics of competition in the relevant market was assessed by examining the market shares over time.[48]

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44 Computation of sales based on Part III of RFI 8 submitted by Pfizer dated 15 April 2019.

45 *Id.*

46 [redacted]

47 [redacted]

48 On a yearly and monthly basis.

54. It was observed that from the year 2014 to 2018, Pfizer CH, GSK CH, Sanofi-Aventis, and Trevenodd Corp. have frequent intersecting points overtime. This shows that there is vigorous competition in the market for PCMs.

55. Based on the data above, the Commission finds that the Proposed Transaction does not create or enhance the incentive of the merged firm to unilaterally raise prices for PCMs. This is because:

    55.1. GSK CH and Pfizer CH are fringe players in the PCM market possessing only [redacted] of the market share post-Transaction, in contrast with Unilab and Sanofi's shares of [redacted] and [redacted], respectively; and

    55.2. The merged entity is faced with a dynamic market for PCMs with strong competitors which will impose significant competitive constraint in the market post-Transaction.

56. Based on the foregoing, the Commission finds that the merged entity will gain limited ability to exercise market power and the Proposed Transaction will not increase the incentive of the merged firm to unilaterally raise prices for PCMs because:

    56.1. there will be no significant change in the market position of the merged entity; and

    56.2. sufficient competitive constraints remain from other market participants post-merger.

Pediatric Analgesics

57. In assessing the incentive of the merged firm to unilaterally raise prices or reduce the discounts to the distributors and retailers for pediatric analgesics ("PAs"), MAO looked into the market shares of the Parties pre- and post-Transaction.

58. GSK CH identifies Taisho's *Tempra* as a major competitor for *Calpol*[49] with the former taking the top spot in brand leadership with [redacted], followed by *Biogesic* with [redacted], and *Calpol* with [redacted].[50]

59. Pfizer CH on the other hand does not monitor the market performance of *Advil for Kids* because Pfizer does not consider *Advil for Kids* as a core brand and does not have marketing plans and investment on the same.

60. In terms of company shares, however, the Parties agree that *Calpol* and *Advil for Kids* are not the market leaders for PAs.

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49 Attachment 4-c of GSK's Response to Phase II RFI (Calpol Marketing Plan).
50 GSK's Supplemental letter dated 15 April 2019.

60.1. Unilab is viewed [redacted] as the leading market player for analgesics with a [redacted] share of the market.[51]

61. However, other manufacturers do not share the same view.

61.1. For [redacted] *Dolan FP (Pedia)* has a market share (in terms of volume) of [redacted].

61.2. While for [redacted] IQVIA, *Biogesic* and *Tempra* are the top analgesics in the market.[52]

62. Taisho currently leads the market for PAs with [redacted] of the total sales in the relevant market, followed by Unilab's market share of [redacted]. While GSK CH appears to be the [redacted] top player in pediatric analgesics with [redacted] market share, Pfizer CH has a negligible market share of [redacted]. Thus, the merged firm will only have a combined market share of [redacted]. With no significant change in the market share and still far below the shares of Unilab, the market conditions for PAs remain the same post-Transaction.

63. Furthermore, the dynamics of competition in the relevant market were also assessed by examining the market shares over time.[53] Results reveal that:

63.1. Taisho has maintained its top position in the market for PAs with its flagship product, *Tempra*.

63.2. GSK and Unilab have frequent intersecting points over time which show that there is a monthly change in market position between these competitors.

64. Based on the foregoing, the Commission finds that the merged entity will gain limited ability to exercise market power and the Proposed Transaction will not increase the incentive of the merged firm to unilaterally raise prices for PAs. This is because:

64.1. Post-Transaction, there will be no significant change in the market position of the merged entity; and

64.2. The merged entity is faced with a dynamic market for PAs with strong competitors which will impose significant competitive constraint in the market post-Transaction, as Taisho and Unilab will still possess the bigger market position for PAs post-merger.

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51 *Id.*

52 Biogesic and Tempra rank 3rd and 4th, respectively, in terms of top 200 products. This however is not segmented on whether said products are for pediatric or adult market.

53 From years 2014 to 2018.

Pediatric Nutritive and Digestive Health Products

65. In assessing the incentive of the merged firm to unilaterally raise prices or reduce the discounts it gives to the distributors and retailers for pediatric nutritive and digestive health products, the market shares of the Parties pre- and post-Transaction were examined by MAO.

66. In its submission, GSK CH finds its product *Scott* [redacted] in rank with [redacted] of the market shares for PNH Products against Unilab's *Ceelin* with [redacted], Intermed's *Cherifer* with [redacted]; and with P&G's *Seven Seas'* ranking [redacted] with [redacted] market share.[54]

67. For Pfizer CH, it compares the performance of Clusivol with [redacted] of the market share with Unilab's *Ceelin* and *UA Tiki Tiki,* and ADP Pharma's *Propan TLC.*[55]

68. According to Unilab's data, the market shares of its PNH Products make up an aggregate of [redacted][56] of the market.

69. Thus, while the merged entity will have a total market share of [redacted], this is still far below Unilab's share of [redacted] for PNH Products. With GSK CH's minimal share pre-Transaction, acquiring Pfizer CH's PNH Products will not change the merged firm's concentration in the market.

70. Given the foregoing, the Commission finds that the merged entity will gain limited ability to exercise market power and the Proposed Transaction will not increase the incentive of the merged firm to unilaterally raise prices for PNH Products because:

    70.1. there will be no significant change in the market position of the merged entity; and

    70.2. sufficient competitive constraints remain from other market participants post-merger.

Loss of actual competition resulting in reduction of innovation

71. An assessment was also made to determine whether the Proposed Transaction would reduce the incentive of the merged entity to engage in innovation in the Relevant Markets. In this case, the possibility of whether the merger will reduce

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54 Attachment 4-c of GSK's Response to Phase II RFI dated 7 May 2019, (Scott's, p. 69.).

55 Attachment 6-16 of Pfizer's Response to Phase II RFI dated 17 May 2019 [redacted]

56 [redacted] for Nutroplex; [redacted] for Growee; [redacted] for UA Tiki Tiki Plus; [redacted] for Nutrilin; [redacted] for UA Tiki Tiki Star; [redacted] for Appebon Kid; and [redacted] for Enervon C.

the innovation in the discovery of new active ingredients or delay the introduction of products with new active products was assessed.

72. MAO noted that CH products generally pertain to or contain off-patent products, and thus require little to no innovation.[57] Furthermore, Pfizer CH and GSK CH currently do not engage in the development of new products [redacted][58]

73. Based on the foregoing, the Commission finds that the merged entity will not likely reduce innovation in the Relevant Markets.

Tying and Bundling

74. The Commission also considered whether the Proposed Transaction will create or enhance the ability and incentive of the merged entity to bundle CH products with prescription products and CH products with other CH products. This may harm the consumers by foreclosing the market for the other products that are part of the market that is bundled.

75. MAO noted that, considering the difference of regulatory regimes for prescription and CH products which result in a separation of operations for prescription and CH products,[59] bundling prescription and CH products does not occur. It was also noted that prescription and CH products are distributed separately.[60] Furthermore, none of the CH products of the merged entity is considered as a must-have product.[61]

76. As for the merged firm's ability and incentive to bundle CH products with other CH products, it is noted that aside from the observation that none of the CH products of the merged entity is considered as a must-have product, there also exists countervailing buyer power from the retailer, decreasing the likelihood of such bundling.

77. Based on the foregoing, the Commission finds that tying and bundling of CH products is unlikely to happen post-Transaction.

Coordinated Effects

78. The Commission also considers whether the merger will increase the likelihood that the firms will coordinate their behavior to raise prices, reduce quality or output, or strengthen existing coordination in a manner that harms competition.

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57 Meeting with Parties dated 20-21 February 2019.

58 *Id.*

59 Interview with GSK dated 20 February 2019. Interview with Pfizer dated 21 February 2019, Interview with [redacted] Interview with [redacted]

60 Interview with GSK dated 20 February 2019.

61 Market Inquiry Response of [redacted]

79. In its investigation, MAO found that in terms of alignment, or the ability to reach and monitor the terms of coordination, it was observed that while firms in the CH market can identity volume, sales and prices through the IQVIA database, such data only provides for information on its subscribers and not the whole market, and further, only captures information at the retail level. This situation is anticipated to substantially remain the same post-Transaction. The merged firm would also continue to belong to the same association while the other competing firms belong in another association.

80. With regard to the sustainability of coordination, while the merger of the Parties may make coordination easier post-Transaction, asymmetries subsist, which may make it hard for firms in the Relevant Markets to agree on an effective mechanism to punish deviation. Moreover, the countervailing buyer power of the distributors and retailers may constrain or undermine coordination in the Relevant Markets.

81. The Commission notes, however, that the foregoing observations are confined to the assessment of increased merger-specific ability and incentive among competitors to engage in coordinated behavior. The Commission makes no pronouncement on possible existing anti-competitive coordinated behavior, if any, among participants in the Relevant Market.

Countervailing Buyer Power

82. The Commission also considers whether customers (*i.e.*, distributors and retailers) may have the incentive and ability to defeat the exercise of market power through their bargaining strength against the seller because of their size, commercial significance to the seller, or ability to switch to alternative sources of supply. In such cases, even firms with very high market share may not be able to exercise market power, post-merger.[62]

83. The market investigation conducted by MAO indicates a strong countervailing buyer power.

84. Distributors, who charge manufacturers per type of activity, can demand fixed margins through its negotiations with manufacturers.[63] Further, retailers, who account for [redacted] of Pfizer CH's sales and 74% of GSK CH's sales, are able to negotiate discounts directly with the Parties.[64] A retailer may refuse to carry a manufacturer's product, if the manufacturer refuses to agree with the retailer's discount.[65]

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62 Merger Review Guidelines, Sec. 7.9 (c).

63 Interview with [redacted] *See* [redacted].

64 Interview with [redacted]; Interview with [redacted]

65 *Id.*

85. The Commission thus finds that there is strong countervailing buyer power coming from both distributors and retailers to constrain the merged entity's exercise of market power.

Barriers to Entry and Expansion

86. An assessment was made to determine whether the new entrants or existing competitors expanding to the relevant markets can pose significant competitive constraints on the behavior of the merged entity. To effectively impose a competitive constraint, such entry or expansion must be likely, sufficient in scope, and timely.

87. As to entry, it may not be likely, timely, and sufficient.

    87.1. On the likelihood of entry, MAO observed that the establishment and maintenance of a manufacturing facility is more capital-intensive than importation and expansion. It also noted that GSK will cease its manufacturing operations in the Philippines by December 2020.[66] As CH products are dependent on brand equity,[67] new entrants must also significantly invest in advertisement to create brand awareness to compete with incumbent players.

    87.2. On the timeliness of entry, it was observed that some companies had already exited the market because the Food and Drug Administration (the "FDA") failed to renew the CPRs of their products in time.[68]

    87.3. On sufficiency of scope, existing firms with established brands may constrain entrants from sufficiently entering or expanding in the Relevant Markets. Brand recognition is one of the main factors in the purchase of drugs by the end-users.

88. As to likelihood, timeliness, and sufficiency of expansion, however, existing firms may expand easily in the relevant markets. CH products are generally off-patent[69] and lack any restrictions in advertising. Thus, existing players can develop a new CH product easily in the relevant market. Existing CH firms with licenses and permits can also easily enter into the relevant markets.

89. Considering the foregoing, the Commission finds that while barriers to entry are high, the barriers to expansion are low.

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66 GSK's response to RFI dated 17 May 2019, Attachment 7(j); Response to Phase II RFI dated 15 May 2019.

67 Market study [redacted]

68 Interview with [redacted]

69 Attachment 15-e of Pfizer's Response to Phase II RFI dated 07 May 2019 (Minimum Viable Scale).

CONCLUSION

90. Upon review of the findings and recommendation of MAO and the Parties' submissions, the Commission finds that the Proposed Transaction will not likely result in substantial lessening of competition in the markets for adult cough medicines, pediatric cough medicines, pediatric analgesic, and pediatric nutritive and digestive products. This is because:

    90.1. the merged entity will gain ability to exercise market power, but will not have enhanced incentive to increase prices in the market for ACMs as estimated customer diversion between the Parties is not significant, and sufficient competitive constraints remain from other market participants. Such competitive constraints likewise mitigate the incentive to reduce innovation of new products;

    90.2. the merged entity will gain limited ability to exercise market power in the markets for PCMs, PAs, and PNH Products, but will not have enhanced incentive to increase prices as there is no significant change in their respective market positions, and sufficient competitive constraints remain from other market participants. Such competitive constraints likewise mitigate the incentive to reduce innovation of new products;

    90.3. there is neither ability nor incentive to tie and bundle CH products with prescription products due to the functional separation and differences in business model of the GSK entities, the lack of must-have products from the Parties, and the strong countervailing buyer power from distributors and retailers;

    90.4. the conditions that facilitate coordination among competitors in the Relevant Markets are not likely to change significantly post-transaction, and cannot conclusively be found to enhance any coordinated effects; and

    90.5. the Relevant Markets will remain contestable and exert competitive pressure on the Parties as barriers to expansion are low despite high barriers to entry.

91. Accordingly, the Commission hereby resolves to take no further action with respect to the Proposed Transaction between GSK CH and Pfizer CH.

92. This Decision is rendered solely on the facts disclosed and circumstances of the Proposed Transaction and documents submitted by GSK CH and Pfizer CH.

27 June 2019.

ARSENIO M. BALISACAN
Chairman

JOHANNES BENJAMIN R. BERNABE
Commissioner

AMABELLE C. ASUNCION
Commissioner

MACARIO R. DE CLARO, JR.
Commissioner

Copies Furnished:

Pfizer, Inc. (Philippines)
18th to 20th Floors, 8 Rockwell Building
Hidalgo Drive, Rockwell Center
Poblacion, Makati City

GlaxoSmithKline Consumer Healthcare Philippines, Inc.
2266 Chino Roces Avenue
Makati City

SyCip Salazar Hernandez & Gatmaitan
Counsel for GlaxoSmithKline Consumer Healthcare Philippines, Inc.
7th Floor, SyCipLaw Center
105 Paseo de Roxas, Makati City

Mergers and Acquisitions Office
25th Floor, Vertis North Corporate Center 1
North Avenue, Quezon City