



# DETERMINATION OF MERGER NOTIFICATION M/18/031 - UNIPHAR/SISK HEALTHCARE

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## Section 21 of the Competition Act 2002

### Proposed acquisition by Uniphar Public Limited Company of sole control of ROI Healthco IOM 2 Limited (SISK Healthcare)

Dated 17 August 2018

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#### Introduction

1. On 26 April 2018, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Uniphar Public Limited Company (“Uniphar”) would acquire the entire issued share capital and thus sole control of ROI Healthco IOM 2 Limited and all of its subsidiaries (collectively “SISK Healthcare”) (“the Proposed Transaction”).

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to two main agreements: (i) a share purchase agreement with a cash consideration and (ii) a share purchase agreement with a share consideration (collectively “the Agreements”).<sup>1</sup> The Agreements are both dated 25 April 2018 and are between Uniphar, and ROI Healthco IOM 1 Limited and its two individual shareholders<sup>2</sup> (collectively “the Vendors”).

#### The Undertakings Involved

##### *The Acquirer - Uniphar*

3. Uniphar is a public limited company headquartered in Citywest Business Park, Co. Dublin, with a second distribution centre in Greenogue, Co. Dublin and regional depots in Cork, Limerick and Sligo.
4. Uniphar comprises two main divisions active in the State, through the following Uniphar subsidiaries:
  - (i) Uniphar Wholesale Limited, which is a full-line wholesaler<sup>3</sup> of pharmaceutical, healthcare and veterinary products to pharmacies, hospitals and veterinary surgeons; and

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<sup>1</sup> According to documentation submitted by the parties, the total consideration will consist of €[...] and €[...] in the merged entity (i.e., Uniphar and Sisk Healthcare combined) subject to certain conditions.

<sup>2</sup> [...] and [...].

<sup>3</sup> As a full-line wholesaler Uniphar purchases a wide range of products from manufacturers and resells them to customers.



- (ii) Allphar Services Limited (“Allphar”), which acts as an agent/pre-wholesaler/logistic services provider (“LSP”), offering a range of distribution services, including storage and warehousing, logistics and order processing (invoicing and delivery) on behalf of medical manufacturers and wholesalers.
5. Uniphar’s primary business in the State is the supply of pharmacy-only human pharmaceuticals, where it principally operates as a wholesaler, purchasing a wide range of pharmacy-only human pharmaceutical products from manufacturers and re-selling such products to community pharmacies and hospital pharmacies. Uniphar also supplies pharmaceutical products, on behalf of manufacturers, to pharmaceutical wholesalers and, with increasing frequency, directly to pharmacies and hospitals.
6. Additionally, Uniphar provides the following goods or services in the State:
  - (i) the provision of logistic services to medical manufacturers/wholesalers, in respect of medical supplies<sup>4</sup>, to public and private hospitals, clinics and community pharmacies;
  - (ii) the supply of front-of-counter and non-pharmacy only products, primarily to pharmacies and other retailers (and a small number of wholesalers);
  - (iii) the supply of animal health products to the wholesale and retail veterinary sectors; and
  - (iv) the provision of professional management services to community pharmacists via its subsidiary, Allcare Management Services Limited. Uniphar also controls and/or has structural links with some retail pharmacies.<sup>5</sup>
7. Uniphar also provides sales and marketing expertise and personnel, in multi-channel outsourcing sales and in manufacturer services in the healthcare sector in the United Kingdom (“the UK”) through Star Medical Limited, OUTICO Limited, Macromed (UK) Limited and Clinical Cube Limited. Since February 2018, Uniphar has also been providing sales, marketing and distribution services, for a number of global medical device providers in the Benelux region, through Uniphar Europe Limited.
8. For the financial year ending 31 December 2016, Uniphar’s worldwide turnover was approximately €1.296 billion, of which approximately €[...] was generated in the State.

#### *The Target - SISK Healthcare*

9. SISK Healthcare includes ROI Healthco IOM 2 Limited, a private limited company, incorporated under the laws of the Isle of Man (Registration Number: 007776V), which has its registered address at First Names House, Victoria Road, Douglas, IM2 4DF, Isle of Man.

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<sup>4</sup> Medical supplies include orthopaedic products, diagnostic imaging products, custom procedure packs, urology and ostomy-related products, diagnostic kits, enteral feeding tubes, parenteral nutrition bags, surgical instrumentation and wound care management products. "Enteral feeding" refers to the delivery of a nutritionally complete feed directly into the stomach or duodenum, while "parenteral nutrition", also known as intravenous feeding, is a method of getting nutrition into the body through the veins.

<sup>5</sup> On 29 January 2016, the Commission cleared Uniphar’s acquisition of sole control of Lindchem Limited, which, at the time of the notification of the proposed acquisition to the Commission, owned 28 community pharmacies in the State. See merger determination *M/15/076 – Uniphar/Lindchem* which can be accessed at <http://ccpc.ie/enforcement/mergers/merger-notices/m15076-uniphar-lindchem>



10. SISK Healthcare is involved in healthcare distribution in the State and in the UK, comprising four main divisions, namely:
- M.E.D. Surgical, headquartered in Howth Junction Business Centre, Dublin 5 and which specialises in the distribution of surgical products, i.e., in relation to general surgery, laparoscopic surgery and urology products;<sup>6</sup>
  - Cardiac Services, with its head office in the State in Glasnevin, Dublin 11 and which supplies diagnostic and therapeutic medical equipment, primarily in the fields of ICU, coronary and maternity;
  - Tekno Surgical, headquartered in Fonthill Business Park, Dublin 22 and which distributes specialist medical products, focusing on the orthopaedic, aesthetics and surgical sectors. Tekno Surgical also re-sells nursing home/consultant suite furniture, dental microscopes, beds, power tools and knee and hip products; and
  - Synapse Medical, headquartered in Santry, Dublin 9 and which supplies medical devices in the areas of cardiology, endovascular, neuroradiology, CT/MRI scans, biopsies, vascular and diagnostic imaging.
11. SISK Healthcare is a 'traditional' distributor of medical products (i.e., it takes title to, and negotiates the sale of, the relevant products), whereby it enters into agreements with various medical product manufacturers (often exclusively) and purchases inventory directly from such manufacturers for distribution of the relevant products. The parties have informed the Commission that [90-100]% of SISK Healthcare's sales are made to hospitals<sup>7</sup>.
12. For the financial year ending 30 December 2017, SISK Healthcare's worldwide turnover was approximately €[...], of which €[...] was generated in the State.

### **Rationale for the Proposed Transaction**

13. The parties state in the notification:

*“By extending its existing capabilities in the supply of medical products, the Proposed Acquisition will further extend Uniphar's business activities outside its core area of the wholesale supply of human-only pharmaceuticals.”*

14. The parties also informed the Commission:

*“[...]”*

### **Preliminary Investigation (“Extended Phase 1”)**

#### **Contacts with the Undertakings Involved**

15. On 06 June 2018, the Commission served a Requirement for Further Information (“RFI”) on each of Uniphar and SISK Healthcare pursuant to section 20(2) of the Act. This

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<sup>6</sup> SISK Healthcare previously distributed enteral feeding products through its M.E.D. Surgical business unit, however, SISK Healthcare ceased to supply these products in 2017.

<sup>7</sup> The remaining 0.1% of sales are made to general practitioners/dentists.



extended the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1.

16. Upon receipt of the responses to the RFIs from each of Uniphar and SISK Healthcare, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act) became 18 June 2018.<sup>8</sup>
17. During its investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the parties.
18. The Commission raised certain concerns with the parties in relation to the effect of the Proposed Transaction on competition in the potential relevant markets. On 18 July 2018, Uniphar submitted to the Commission proposals regarding measures to be taken to ameliorate any effects of the Proposed Transaction on competition in accordance with section 20(3) of the Act. The submission of these proposals by Uniphar further extended the Commission’s Phase 1 review period, from 30 working days to 45 working days, in accordance with section 21(4) of the Act.
19. The Commission engaged with Uniphar’s legal advisors for the purpose of discussing and developing the proposals submitted to the Commission by Uniphar and on 16 August 2018, Uniphar submitted to the Commission a final set of proposals (“the Proposals”) under section 20(3) of the Act. The Proposals are included at the end of this Determination.

### **Third Party Submissions**

20. No third party submission was received by the Commission.

### **Market Enquiries**

21. During its investigation, the Commission contacted various third parties, including customers, suppliers and competitors of the parties in the State, who were identified from lists the parties provided to the Commission.
22. The Commission received a number of detailed responses from third parties following queries from the Commission. Additionally, the Commission had a number of telephone conversations with some of the third parties, to further discuss and clarify aspects of their responses.
23. The different roles currently played by Uniphar and SISK Healthcare in the supply of medical supplies in the State were highlighted and confirmed to the Commission, where Uniphar acts as an agent/pre-wholesaler/LSP, providing logistical services and SISK Healthcare is a distributor/wholesaler. The different roles that Uniphar and SISK Healthcare play in the supply of medical supplies will be more fully discussed under the competitive analysis below.
24. Competition concerns were raised over the fact that following the implementation of the Proposed Transaction, Uniphar could use its knowledge of third parties’ commercially sensitive information to influence the trading decisions of SISK

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<sup>8</sup> The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.



Healthcare, which has the distribution rights for certain competing brands/products. In essence Uniphar will be able to misuse third party competitively sensitive information to the detriment of competitors and customers.

25. The Commission has taken all of this information into account in its analysis below.

### **Competitive Analysis**

#### Horizontal Overlap

26. Uniphar and SISK Healthcare are both active in the distribution of medical supplies in the State. However, the parties point out that their respective activities are distinguishable; Uniphar is an agent whereas SISK Healthcare is a traditional distributor.
27. The parties submit there is minimal closeness of competition between Uniphar and SISK Healthcare in the provision of any of the products supplied by both parties. The parties are of the view that there may theoretically be a horizontal overlap between their activities in the State with respect to the distribution of medical supplies, including orthopaedic products, diagnostic imaging products and custom procedure packs, where:
- Uniphar, through Allphar, acts as agent/pre-wholesaler/LSP for a range of medical supplies (including orthopaedic products, diagnostic imaging products and custom procedure packs) to the healthcare sector in the State, providing a range of distribution services including warehousing, delivery and order processing (invoicing and delivery). Uniphar does not acquire ownership of the medical supplies, nor does it have any control over prices or other key terms under which such products are supplied to customers (hospitals, clinics and community pharmacies). As such, Uniphar acts as an agent/pre-wholesaler/LSP for a number of manufacturers/wholesalers of medical supplies, where the relevant manufacturer/wholesaler pays a separate fee for Uniphar's services; and
  - SISK Healthcare, through its four divisions, M.E.D. Surgical, Cardiac Services, Tekno Surgical and Synapse Medical, acts as a distributor (rather than an agent/pre-wholesaler/LSP) of medical supplies in the State, (including orthopaedic products, diagnostic imaging products and custom procedure packs). As such, SISK Healthcare purchases medical supplies from various manufacturers, taking title of the relevant products and has control over pricing and other key terms of supply, when selling those products on to customers (mostly hospitals).
28. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. With respect to the relevant product market, it is not necessary for the Commission to define the precise relevant market in this instance because the product market definition adopted will not alter the Commission's assessment of the competitive impact of the Proposed Transaction, regardless of whether the relevant product market is defined narrowly or more broadly. In this case, the Commission considers that there is no reason to depart from its previous approach to potential market definition in relation to the provision of medical supplies for the



purpose of assessing the competitive effect of the Proposed Transaction<sup>9</sup> and consequently the Commission has assessed the competitive impact of the Proposed Transaction by reference to both the broader and narrower potential product markets.

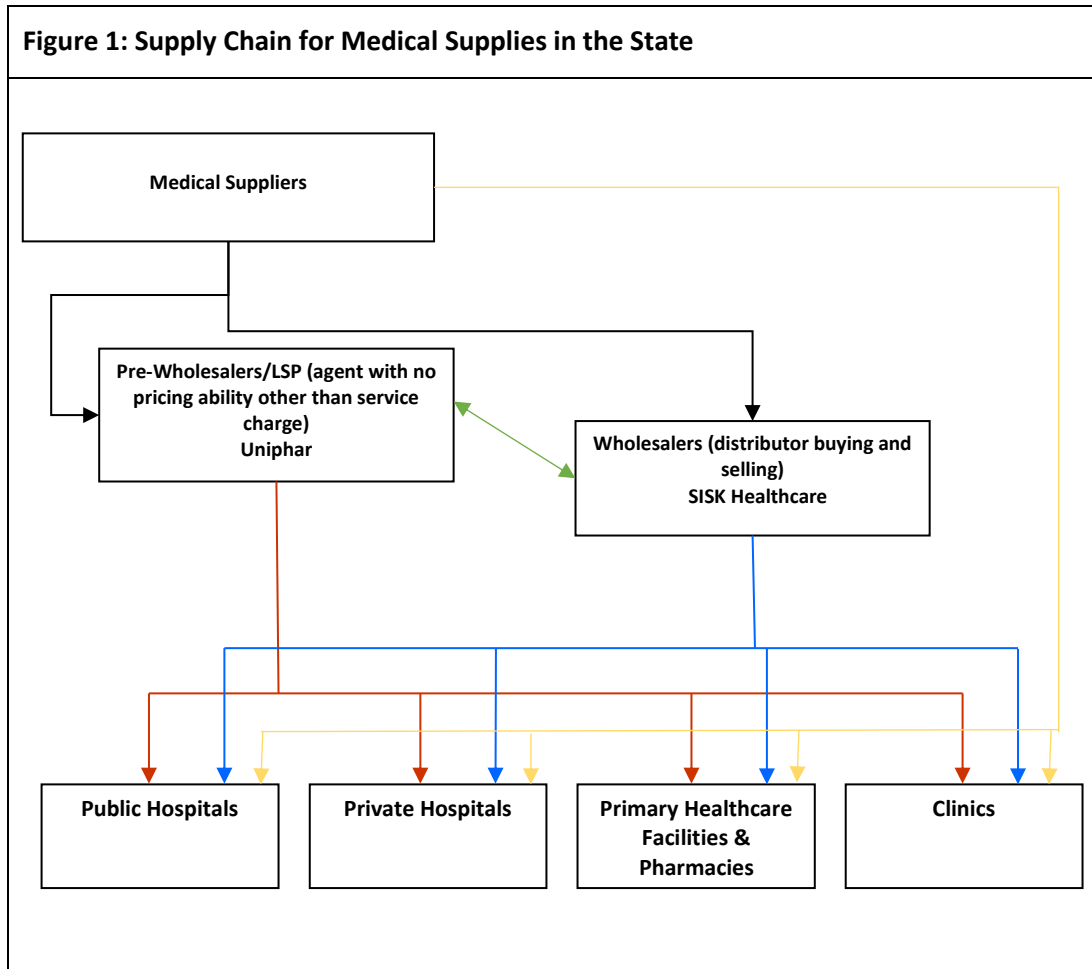
29. Similarly, the Commission does not need to come to a definitive view on the precise relevant geographic market in this instance since its conclusion on the competitive impact of the Proposed Transactions will be unaffected whether the precise relevant geographic market is defined as narrow (i.e., national) or broader to encompass the State and the UK (where both parties are also active). However, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission analysed its impact by reference to a national market, i.e. the State.
30. In order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission assessed the Proposed Transaction's impact on competition in the State by reference to:
- (i) the broader product market, namely, the provision of medical supplies in the State;
  - (ii) the activities of the parties in the State in relation to specific product types, namely:
    - a. the supply of orthopaedic products;
    - b. the supply of diagnostic imaging products; and
    - c. the supply of custom procedure packs.

#### *Provision of Medical Supplies in the State*

31. Figure 1 below illustrates the typical supply chain for medical supplies in the State.

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<sup>9</sup> Please see, for example, merger determination M/12/027 – Uniphar/CMR which can be accessed at: <https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/04/M-12-027-Uniphar-CMR-Determination-Public.pdf>



Source: The Commission based on information provided by the parties

32. Uniphar estimates the total value of the medical supplies market in which it was active in the State in 2017 to be worth in the region of €450 million<sup>10</sup>, with Uniphar having an estimated share of this potential market of approximately [5-10]%. SISK Healthcare estimates its share of the market to be in the region of [0-5]%.
33. The parties note and the Commission concurs, that there are a number of other providers of medical supplies in the State, both manufacturers and distributors, as listed in Table 1 below and that these suppliers will continue to act as a competitive constraint on the parties following the implementation of the Proposed Transaction.

Supplier	Status
Uniphar (Allphar)	LSP (for [...], [...], [...] and [...])
SISK Healthcare	Distributor (for, <i>inter alia</i> , [...], [...], [...], [...], [...] and [...])
Fannin (DCC)	Distributor

<sup>10</sup> Up from the estimated total value of the medical supplies market in 2012 of €350 million, as set out in the Commission’s merger determination M/12/027 – Uniphar/CMR (supra).

<sup>11</sup> According to the parties the first five (5) competitors listed in Table 1 have estimated market shares in the region of between [0-5]% and [0-5]% respectively.



<i>Aquilant (UDG Healthcare)</i>	Distributor
<i>M3 Medical</i>	Distributor
<i>PEI Surgical</i>	Distributor
<i>Henry Schein</i>	Distributor
<i>J&amp;J DuPey/Synthes</i>	Manufacturer
<i>Premier Medical</i>	Distributor
<i>Vesalius</i>	Distributor
<i>Medtronic</i>	Manufacturer
<i>Zimmer Biomet</i>	Manufacturer
<i>K2M Spine</i>	Manufacturer
<i>Globus Spine</i>	Manufacturer
<i>B Braun</i>	Manufacturer
<i>Bayer Diagnostics</i>	Manufacturer
<i>GE Healthcare</i>	Manufacturer
<i>ArcRoyal</i>	Manufacturer
<i>3M</i>	Manufacturer
<i>Beaver Visitec</i>	Manufacturer
<i>Accuscience</i>	Distributor
<i>Rociale</i>	Manufacturer
Others	Various

34. Furthermore, the Commission contacted key customers of both Uniphar and SISK Healthcare, the majority of whom informed the Commission that they do not have any substantial competition concerns about the Proposed Transaction because medical supplies consist of a vast category of products and there are a number of alternative suppliers within the market in the State.
35. Also, the parties argued that it is relatively easy for a manufacturer/wholesaler to switch their business to an alternative distributor and/or pre-wholesaler/LSP, or even to self-supply.
36. For these reasons, the Commission considers that the Proposed Transaction will not result in horizontal competition concerns in the broader potential market for the provision of medical supplies in the State.

#### *Specific product types in the State*

##### *Supply of Orthopaedic Products*

37. Orthopaedic products include implants such as replacement knees, hips, etc.
38. The Commission notes that in a recent decision by the European Commission, in *M.7265 - Zimmer/Biomet*<sup>12</sup>, which related to a merger of two manufacturers of orthopaedic equipment, that approximately 40% of total sales of orthopaedic implants in the State were made through tenders.
39. The Commission also notes that the supply of orthopaedic products to hospitals forms a significant part of the business of the parties. Both Uniphar and SISK Healthcare

<sup>12</sup> Case No. COMP/M.7265 – *Zimmer/Biomet*, decision dated 30 March 2015, paragraph 255.





supply orthopaedic products to hospitals only (both to public hospitals/the HSE and to private hospitals). The supply of such products make up approximately [20-25]% and [35-40]% of total sales of medical supplies by Uniphar and SISK Healthcare in the State in 2017, respectively.

40. In the potential market for the supply of orthopaedic products in the State, the parties estimate their market shares to be in the region of [5-10]% and [40-45]% respectively. Uniphar (through Allphar) acts as agent/pre-wholesaler/LSP for a single manufacturer/brand, being [...]. Similarly, SISK Healthcare is a distributor of a range of single branded orthopaedic products, sourced from one manufacturer, [...].
41. Furthermore, each party supplies the brand of a single manufacturer only. Furthermore, in conjunction with the presence of tendering in the market for the supply of orthopaedic products, the Commission notes that there are a number of other suppliers of orthopaedic products in the State, including *PEI Surgical*, *J&J DuPey/Synthes*, *Premier Medical*, *Vesalius*, *Medtronic* and *Zimmer Biomet*, which will continue to act as competitive constraint on Uniphar post Transaction.

#### *Supply of Diagnostic Imaging Products*

42. Both Uniphar and SISK Healthcare supply diagnostic imaging products to hospitals/clinics and supply of such products make up approximately [0-5]% and [0-5]% of their total sales of medical supplies in the State in 2017, respectively. Furthermore, there are at least two other suppliers of diagnostic imaging products in the State, being *Bayer Diagnostics* and *GE Healthcare*.
43. In respect of the potential market for the supply of diagnostic imaging products in the State, Uniphar and SISK Healthcare estimate their market shares to be in the region of [10-15]% and [30-35]% respectively. However, this product area can be sub-divided into two categories: consumables and capital equipment. Consumables include contrast media (also known as contrast agents or contrast materials). These are used to improve images of the inside of the body produced by x-rays, ultrasounds, and other diagnostic procedures. Capital equipment, on the other hand, includes products such as injectors for use in diagnostic procedures.
44. Uniphar acts as agent/pre-wholesaler/LSP for a single manufacturer, [...], which manages all sales, marketing and commercial support activities. SISK Healthcare distributes consumables/contrast media products on behalf of [...] and capital equipment/injectors on behalf of [...]. SISK Healthcare's Synapse Medical business unit has a wholesale distribution authorisation from the Health Products Regulatory Authority for the provision of contrast media.

#### *Supply of Custom Procedure Packs*

45. In respect of the potential market for the supply of custom procedure packs in the State, both Uniphar and SISK Healthcare supply such products. A 'custom procedure pack' is, essentially, a specific set of disposable medical products provided in a single packed sterile tray format for use in an operating theatre setting. Custom procedure packs can be sub-divided into 'small' and 'large' packs and include dressing sets, suture sets, minor surgery sets, etc. Uniphar and SISK Healthcare estimate their market shares in this narrow potential market to be in the region of [5-10]% and [0-5]% respectively.



46. Uniphar (through Allphar) acts as agent/pre-wholesaler/LSP for two wholesalers of custom procedure packs, being [...] and [...]. In 2017, supply of such products made up approximately [0-5]% of total sales of medical supplies of Uniphar in the State.
47. SISK Healthcare's supply of custom procedure packs in the State was reduced significantly as from the end of 2017, where SISK Healthcare previously represented [...] in the distribution of 'large' custom procedure packs, which in 2017 made up approximately [0-5]% of SISK Healthcare's turnover in the State.<sup>13</sup> However, SISK Healthcare's distribution agreement with [...] terminated in January 2018<sup>14</sup> and since then, SISK Healthcare is only active in the distribution of 'small' custom procedure packs on behalf of [...], [...] and [...].
48. While both parties currently supply 'small' custom procedure packs only, most competing suppliers, such as *Fleming Medical*, and *Unisurge (Accuscience)* provide both types, i.e., 'small' and 'large' packs.

*Potential for misuse of third parties' Competitively Sensitive Information [Anti-competitive information exchange]*

49. Given the high market shares of the parties in some of the potential narrow product markets discussed above, the Commission's market inquiries identified the following competition concerns arising from the Proposed Transaction:
  - the potential that the Proposed Transaction may give Uniphar, through its proposed ownership and control of SISK Healthcare, both the ability and incentive to use competitively sensitive information relating to customer and pricing information, to which it has access, as agent/pre-wholesaler/LSP, through Allphar, of manufacturers/wholesalers which it represents, such as [...], [...], [...] and [...], when setting SISK Healthcare's prices for competing products, distributed/re-sold on behalf of manufacturers such as [...], [...], [...] and [...], etc.; and
  - the potential that the Proposed Transaction may give Uniphar, through its proposed ownership and control of SISK Healthcare, both the ability and incentive to use competitively sensitive information relating to SISK Healthcare's prices for products, which it distributes/re-sells on behalf of manufacturers such as [...], [...], [...] and [...] etc., to influence service fee charges, as agent/pre-wholesaler/LSP, of competing manufacturers/wholesalers which it represents, such as [...], [...], [...] and [...], etc.
50. In the light of the above, the Commission was concerned that the Proposed Transaction could facilitate coordination of prices and terms and conditions by Uniphar. In order to address potential competition concerns and specifically the potential misuse / anti-competitive sharing of third parties' commercially sensitive information, the Commission required Uniphar to submit proposals.

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<sup>13</sup> SISK Healthcare's total 2017 turnover figure for all custom procedure packs (large and small) amounted to €[...], of which €[...] was derived from the distribution of small custom procedure packs.

<sup>14</sup> [...] was acquired by US listed entity [...] in 2014, which subsequently made a strategic decision to change its distribution model to supply products direct to the market rather than using an in-market partner.



### *Proposals Submitted by Uniphar to Ameliorate Competition Concerns*

51. On 16 August 2018, Uniphar submitted the Proposals to the Commission in accordance with section 20(3) of the Act for the purpose of ameliorating any effects of the Proposed Transaction on competition in markets for goods or services in the State. The Proposals submitted by Uniphar included firewall and confidentiality commitments, specifically relating to (a) orthopaedic products, (b) diagnostic imaging products and (c) custom procedure packs.
52. The Proposals are intended to prevent the exchange of third parties' competitively sensitive information between Uniphar's pre-wholesale/LSP division (Allphar) and SISK Healthcare's wholesale/distribution divisions, following completion of the Proposed Transaction.
53. The Proposals are also intended to ensure that, following completion of the Proposed Transaction, SISK Healthcare will be held separate from Uniphar and continue to manage its own business relationships, in particular, those with customers and suppliers of orthopaedic products, diagnostic imaging products and custom procedure packs, including SISK Healthcare's relationship with [...], [...], [...] and [...].
54. The Commission is of the view that the Proposals are appropriate and effective to address competition concerns in the potential market for the supply of medical supplies in the State and more specifically in the three potential narrow product markets identified, namely (a) the supply of orthopaedic products, (b) the supply of diagnostic imaging products and (c) the supply of custom procedure packs.
55. The Commission has taken the Proposals into account and in light of the said Proposals (which form part of the basis of its determination) the Commission has determined, in accordance with section 21(2)(a) of the Act, that the result of the Proposed Transaction will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

### *Vertical Relationship*

56. The parties informed the Commission in the notification that there is no vertical relationship between Uniphar and SISK Healthcare. SISK Healthcare has not purchased any products from Uniphar over the past 36 months. However, the Commission's investigation has identified that Uniphar has made a small amount of purchases from SISK Healthcare since its acquisition of Murray's Medical's ostomy and urinary business in 2016<sup>15</sup>. Those purchases were limited to ostomy-related products<sup>16</sup> and for the period 1 January 2016 to 31 May 2018 such purchases amounted to less than approximately €[...]. This suggests that any vertical relationship that exists between the parties is minimal and will not raise vertical foreclosure concerns. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

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<sup>15</sup> M/15/077 – Uniphar/Murrays Medical, cleared by the Commission on 23 March 2016. For more information see: <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m15077-uniphar-murray-medical/>

<sup>16</sup> Mainly catheters and pessary rings.



### Ancillary Restraints

57. In the notification, the parties provided the Commission with copies of the Agreements, which contain a number of restrictive obligations on the Vendors. These include non-compete and non-solicitation clauses. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.<sup>17</sup> The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

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<sup>17</sup> In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



## **Determination**

Pursuant to section 20(3) of the Competition Act 2002, as amended, Uniphar Public Limited Company (“Uniphar”) has submitted to the Competition and Consumer Protection Commission (“the Commission”) the proposals set out below relating to the proposed acquisition by Uniphar of the entire issued share capital and thus sole control of ROI Healthco IOM 2 Limited and all of its subsidiaries (collectively “SISK Healthcare”), for the purpose of ameliorating any effects on competition in markets for goods or services, with a view to the proposals becoming binding on Uniphar.

The Commission has taken the proposals into account and in light of the said proposals (which form part of the basis of its determination) has determined, in accordance with section 21(2)(a) of the Act, that the result of the proposed acquisition whereby Uniphar would acquire the entire issued share capital and thus sole control of SISK Healthcare will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Brian McHugh**  
**Member**  
**Competition and Consumer Protection Commission**



## PROPOSALS BY UNIPHAR RELATING TO THE PROPOSED ACQUISITION OF ROI HEALTHCO IOM 2 LIMITED (SISK HEATHCARE) ("Proposals")

### RECITALS

- a) On 26 April 2018, the proposed acquisition by Uniphar of SISK Healthcare was notified to the Commission under Part 3 of the Act.
- b) Uniphar and SISK Healthcare are both active in the supply of medical supplies/devices in the State.
- c) Uniphar acts primarily as a pre-wholesaler/logistics services provider through its subsidiary, Allphar. SISK Healthcare acts as a distributor/wholesaler through its four business units, namely M.E.D. Surgical, Cardiac Services, Tekno Surgical and Synapse Medical. In particular, both Uniphar and SISK Healthcare supply orthopaedic products, diagnostic imaging products and custom procedure packs, which SISK Healthcare distributes through its Tekno Surgical, Synapse Medical and M.E.D. Surgical business units respectively.
- d) Pursuant to Section 20(3) of the Act, Uniphar has submitted the Proposals to the Commission relating to the Proposed Transaction for the purpose of ameliorating any possible effect of the Proposed Transaction on competition in markets for goods or services, with a view to the Proposals becoming binding on Uniphar and, following Completion, on SISK Healthcare.
- e) The Proposals submitted by Uniphar are intended to prevent the exchange of competitively sensitive information between Uniphar and SISK Healthcare, relating to orthopaedic products, diagnostic imaging products and custom procedure packs, following Completion.
- f) The Proposals are also intended to ensure that, following Completion, SISK Healthcare will be managed separately to Uniphar and will continue to manage its own business relationships, in particular, those with customers and suppliers of orthopaedic products, diagnostic imaging products and custom procedure packs, including SISK Healthcare's relationships with [...], [...], [...] and [...].

#### A. Definitions

1. For the purpose of the Proposals, the following terms shall have the following meaning:

"**Act**" means the Competition Act 2002, as amended;

"**Allphar**" means All-Phar Services Limited, a private limited company incorporated under the laws of Ireland (Registration No. 52690), which has its registered address at 4045 Kingswood Road, Citywest Business Park, Co. Dublin;

"**Allphar Officer**" means any director or the Company Secretary of Allphar;

"**Allphar Personnel**" means any director, officer, manager, employee, representative, agent, or person holding equivalent functions, of Allphar;



"**Cash SPA**" means the Share Purchase Agreement (Cash Consideration) dated 25 April 2018 between ROI Healthco IOM 1 Limited, [...], [...] and Uniphar;

"**Commencement Date**" means the date of the Commission's Determination;

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

"**Common Group Officers**" means the persons from time to time holding the positions of Chief Executive Officer, Chief Financial Officer, Chief Operating Officer and Company Secretary of Uniphar plc;

"**Completion**" means completion of the Proposed Transaction as defined in the Cash SPA and Share Purchase Agreement (Share Consideration) dated 25 April 2018 between ROI Healthco IOM 1 Limited, [...], [...] and Uniphar;

"**Confidentiality Commitment**" means the commitments outlined at Part B paragraph 3 of the Proposals;

"**Determination**" means the Determination of the Commission pursuant to section 21(2)(a) of the Act that the Proposed Transaction may be put into effect;

"**Firewall Commitment**" means the commitments outlined at Part B paragraphs 1 and 2 of the Proposals;

"**Proposed Transaction**" means the proposed acquisition by Uniphar of the entire issued share capital of SISK Healthcare as notified to the Commission on 26 April 2018;

"**SISK Healthcare**" means ROI Healthco IOM 2 Limited, a private limited company, incorporated under the laws of the Isle of Man (Registration Number: 007776V), which has its registered address at First Names House, Victoria Road, Douglas, IM2 4DF, Isle of Man. For the avoidance of doubt, this definition of "SISK Healthcare" includes all of its subsidiaries;

"**SISK Healthcare Competitively Sensitive Information**" means any specific information (in particular information relating to SISK Healthcare's current and future strategic intentions; past, present or future negotiations with customers, manufacturers and suppliers; and/or disaggregated information relating to current or future SISK Healthcare discounts, rebates, pricing and promotional activity) concerning SISK Healthcare's supply of orthopaedic products, diagnostic imaging products or custom procedure packs (including information relating to the supply of [...] orthopaedic products, [...] and [...] diagnostic imaging products and [...] custom procedure packs) where the disclosure of such information to third parties would constitute a breach of Section 4(1) of the Act. For the avoidance of doubt, information that is available in any form to the public by lawful means, other than as a result of a breach of the Proposals, shall not be considered to constitute "SISK Healthcare Competitively Sensitive Information";

"**SISK Healthcare Management Team**" means a restricted group of SISK Healthcare Personnel who (i) directly support the SISK Healthcare Manager in administering that part



of the SISK Healthcare business that requires access to SISK Healthcare Competitively Sensitive Information and (ii) to fulfil properly their role and functions, must have access to SISK Healthcare Competitively Sensitive Information; provided that, in all events, the SISK Healthcare Management Team is kept at all times to the least number of SISK Healthcare Personnel possible (consistent with good commercial practice);

"**SISK Healthcare Manager**" means the person, [...], who has been appointed by Uniphar to undertake the day-to-day management of SISK Healthcare following Completion, and his successors in this role;

"**SISK Healthcare Officer**" means any director or the Company Secretary of SISK Healthcare;

"**SISK Healthcare Personnel**" means any director, officer, manager, employee, representative, agent, or person holding equivalent functions, of SISK Healthcare;

"**Term**" means five years beginning on the Commencement Date;

"**Uniphar**" means Uniphar plc, a public limited company incorporated under the laws of Ireland (Registration No. 224324), which has its registered address at 4045 Kingswood Road, Citywest Business Park, Co. Dublin. For the avoidance of doubt, this definition of "Uniphar" includes all its subsidiaries with the exception, following Completion, of SISK Healthcare;

"**Uniphar Competitively Sensitive Information**" means any specific information (in particular information relating to current and future strategic intentions; past, present or future negotiations with customers, manufacturers and suppliers; and/or disaggregated information relating to current or future discounts, rebates, pricing and promotional activity) concerning Uniphar's supply or delivery of orthopaedic products, diagnostic imaging products or custom procedure packs (including information relating to the supply of [...] orthopaedic products, [...] diagnostic imaging products and [...] and [...] custom procedure packs) where the disclosure of such information to third parties would constitute a breach of Section 4(1) of the Act. For the avoidance of doubt, information that is available in any form to the public by lawful means, other than as a result of a breach of the Proposals, shall not be considered to constitute "Uniphar Competitively Sensitive Information";

"**Uniphar Compliance Officer**" means the person, [...], who has been appointed by Uniphar to oversee compliance with the Proposals, as contemplated at Part B paragraph 9 of the Proposals; and

"**Uniphar Personnel**" means any director, officer, manager, employee, representative, agent, or person holding equivalent functions, of Uniphar.

## B. Undertakings by Uniphar

### ***Firewall Commitment***

1. On Completion, Uniphar undertakes that:

- a. Uniphar shall appoint the SISK Healthcare Manager to undertake the day-to-day management of SISK Healthcare.





- b. Uniphar shall (within one month of Completion) provide to the Commission in writing the name and contact details of each member of the SISK Healthcare Management Team.
2. During the Term, Uniphar undertakes that:
- a. Uniphar shall ensure the separate management of SISK Healthcare and Uniphar, as provided under the terms of these Proposals. In particular, Uniphar shall procure that the SISK Healthcare Manager will continue to manage SISK Healthcare's business relationships in Ireland with [...], [...], [...] and [...].
  - b. Uniphar shall procure that the SISK Healthcare Manager inform [...], [...], [...] and [...] that the SISK Healthcare Manager, the SISK Healthcare Management Team, and in limited circumstances, the SISK Healthcare Officers and Common Group Officers, shall be the sole recipients within SISK Healthcare and Uniphar of SISK Healthcare Competitively Sensitive Information.
  - c. Subject to paragraph 2 h, Uniphar shall procure that only the SISK Healthcare Manager and SISK Healthcare Management Team, and no Uniphar Personnel (including, for the avoidance of doubt, Allphar Personnel), will have access to SISK Healthcare Competitively Sensitive Information.
  - d. Subject to paragraph 2 g, Uniphar shall ensure that no SISK Healthcare Personnel will have access to Uniphar Competitively Sensitive Information.
  - e. Uniphar shall inform [...], [...], [...] and [...] that Uniphar Personnel, excluding any SISK Healthcare Personnel, shall be the sole recipients of Uniphar Competitively Sensitive Information.
  - f. Uniphar shall take all reasonable steps to ensure that the positions of SISK Healthcare Manager and Uniphar Compliance Officer are not vacant at any time.
  - g. Uniphar shall, to the extent that any Common Group Officer obtains Uniphar Competitively Sensitive Information for the purpose of complying with his/her statutory or common law duties as a company director or company secretary of Allphar:
    - (i) ensure that that person shall not disclose such information to any SISK Healthcare Personnel (other than, if necessary, one or more Common Group Officers); and
    - (ii) procure that the Company Secretary of Allphar shall promptly inform the Uniphar Compliance Officer, who shall in turn within two (2) weeks inform the Commission, of the precise scope and nature of the Uniphar Competitively Sensitive Information obtained.
  - h. Uniphar shall, to the extent that any Common Group Officer obtains SISK Healthcare Competitively Sensitive Information for the purpose of complying



with his/her statutory or common law duties as a company director or company secretary of SISK Healthcare:

- (i) ensure that that person shall not disclose such information to any Uniphar Personnel (including, for the avoidance of doubt Allphar Personnel) (other than, if necessary, one or more Common Group Officers); and
  - (ii) procure that the SISK Healthcare Manager shall within two (2) weeks inform the Commission of the precise scope and nature of the SISK Healthcare Competitively Sensitive Information obtained.
- i. Neither the SISK Healthcare Manager nor any member of the SISK Healthcare Management Team shall serve simultaneously as an officer, director, representative, agent or persons holding equivalent functions of Uniphar without the prior written consent of the Commission (such consent not to be unreasonably withheld or denied).
  - j. Uniphar shall ensure that, other than the Chief Executive Officer of Uniphar, the Chief Financial Officer of Uniphar and the Company Secretary of Uniphar, no Uniphar Personnel or any Allphar Personnel will serve simultaneously as an officer, director, secretary, representative, agent or persons holding equivalent functions of SISK Healthcare, save with the prior written consent of the Commission (such consent not to be unreasonably withheld or denied).
  - k. The terms of this paragraph 2 are subject to paragraph 3 g and 3 h.

### ***Confidentiality Commitment***

3. During the Term, Uniphar undertakes that:

- a. Uniphar shall procure that the SISK Healthcare Manager and the SISK Healthcare Management Team shall not discuss SISK Healthcare Competitively Sensitive Information with, or provide SISK Healthcare Competitively Sensitive Information to, Uniphar or any Uniphar Personnel or Allphar Personnel.
- b. Uniphar shall not (and shall not permit Uniphar Personnel or Allphar Personnel to) solicit, directly or indirectly, SISK Healthcare Competitively Sensitive Information from SISK Healthcare or any SISK Healthcare Personnel or from the SISK Healthcare Manager or SISK Healthcare Management Team.
- c. Uniphar shall take all reasonable steps to ensure that neither SISK Healthcare Personnel, the SISK Healthcare Manager nor the SISK Healthcare Management Team shall provide SISK Healthcare Competitively Sensitive Information to Uniphar or to any Uniphar Personnel or Allphar Personnel.
- d. Uniphar shall not directly or indirectly provide (and shall use reasonable endeavours to prevent Uniphar Personnel or Allphar Personnel from providing directly or indirectly) Uniphar Competitively Sensitive Information to SISK Healthcare Personnel, the SISK Healthcare Manager or the SISK Healthcare Management Team.



- e. Uniphar shall use reasonable endeavours to procure that SISK Healthcare shall not (and SISK Healthcare shall not permit SISK Healthcare Personnel to) solicit, directly or indirectly, Uniphar Competitively Sensitive Information from Uniphar or any Uniphar Personnel.
- f. Uniphar undertakes to inform Uniphar Personnel, Allphar Personnel and SISK Healthcare Personnel of their respective responsibilities pursuant to the Proposals and shall provide both training and written guidelines to them in that regard.
- g. The Proposals shall not prevent any disclosure of SISK Healthcare Competitively Sensitive Information to Uniphar (or to any Uniphar Personnel or Allphar Personnel) in order for Uniphar to comply with any applicable law or regulation (including stock exchange rules or securities laws), or judicial or arbitral process of competent jurisdiction, or required by a competent authority.
- h. The Proposals shall not prevent any disclosure of SISK Healthcare Competitively Sensitive Information to Common Group Officers for use in connection with any offering (or proposed offering) of securities by Uniphar.

C. Compliance

- 4. Uniphar shall submit to the Commission within twelve (12) months of the Commencement Date, and, at intervals of one year thereafter during the Term, a written certificate in the form set out in Schedule A, signed by an executive director of Uniphar confirming that Uniphar has complied with its obligations set out in the Proposals in the preceding period.
- 5. Uniphar shall procure that SISK Healthcare submit to the Commission within twelve (12) months of the Commencement Date, and, at intervals of one year thereafter during the Term, a written certificate in the form set out in Schedule B, signed by a member of the SISK Healthcare Management Team, confirming that SISK Healthcare has complied with its obligations set out in paragraphs 2 a, 2 b, 2 c, 2 h, 3 a and 3 e of the Proposals in the preceding period.
- 6. The Commission reserves the right to require Uniphar to provide to the Commission, at any time and on reasonable notice, such additional information as the Commission requires which is necessary in order for the Commission to verify Uniphar's compliance with its obligations set out in the Proposals. Uniphar shall provide to the Commission all such information in its possession promptly.
- 7. The Commission may provide with reasonable notice and on reasonable terms such written directions to Uniphar from time to time as needed to require compliance with the Proposals. Uniphar shall comply promptly with any written direction issued by the Commission pursuant to the Proposals.
- 8. Uniphar shall provide written notice to the Commission in advance of any change of the SISK Healthcare Officers, Allphar Officers, Common Group Officers, the SISK Healthcare Manager, the SISK Healthcare Management Team or the Uniphar Compliance Officer and shall promptly provide to the Commission the name and contact details of any



person who is to replace the prior nominated SISK Healthcare Manager, a member of the SISK Healthcare Management Team, a SISK Healthcare Officer, an Allphar Officer, a Common Group Officer or the Uniphar Compliance Officer. Where practicable, Uniphar shall take all reasonable steps to provide such written notice one month in advance of any change.

9. The Uniphar Compliance Officer will have responsibility for monitoring compliance by Uniphar and SISK Healthcare with the Proposals and for responding to any request for information received from the Commission in connection with the Proposals. Uniphar shall provide the name and contact details of the Uniphar Compliance Officer to the Commission and shall promptly inform the Commission of any change of the Uniphar Compliance Officer and shall promptly provide to the Commission the name and contact details of the person who is to replace the Uniphar Compliance Officer.
10. The Proposals, with the exception of paragraph 1 of the Firewall Commitment, will come into effect on the Commencement Date and will remain in force during the Term. Paragraph 1 will come into force on Completion. For the avoidance of doubt, the Proposals shall have no retrospective effect.
11. In response to a reasoned written request from Uniphar, the Commission may at its sole discretion waive, modify or substitute any provision in the Proposals. At any time, subject to providing Uniphar 30 days' written notice (unless waived by the Commission at its discretion) allied to providing Uniphar with an opportunity to provide a written submission to the Commission, the Commission may at its sole discretion waive, modify or substitute any provision in the Proposals.
12. Clause 3.9 of the Cash SPA requires the ongoing provision, post-Completion, of information, in particular information relating to [...] (the "**Clause 3.9 Information**"), by Uniphar to [...]. In line with the Confidentiality Commitment and Firewall Commitment, Uniphar shall procure that, to the extent that the Clause 3.9 Information comprises SISK Healthcare Competitively Sensitive Information it should be provided to [...] pursuant to Clause 3.9 of the Cash SPA only by the SISK Healthcare Manager and, in accordance with paragraph 13, shall not be disclosed to any Uniphar Personnel other than the Common Group Officers.
13. For the avoidance of doubt, nothing in these Proposals shall prevent the Common Group Officers from reviewing any Clause 3.9 Information and/or any information required to produce the Clause 3.9 Information. In line with these Proposals, Uniphar shall ensure that, in performing their functions under this paragraph 13, the Common Group Officers do not disclose any of the Clause 3.9 Information to any other Uniphar Personnel.

Dated 16 August 2018

**SIGNED** for and on behalf of  
**UNIPHAR PUBLIC LIMITED COMPANY**  
by its duly authorised representative

By: \_\_\_\_\_



Name: \_\_\_\_\_

Title: \_\_\_\_\_



**SCHEDULE A**  
[Uniphar Headed Paper]

[date]

Ibrahim Bah  
Director  
Competition Enforcement and Mergers  
Competition and Consumer Protection Commission  
Bloom House  
Railway Street  
Dublin 1

**Merger Notification M/18/031 Uniphar/SISK Healthcare**

Dear Sir

I refer to Merger Notification M/18/031 in relation to the proposed acquisition by Uniphar plc ("Uniphar") of ROI Healthco IOM 2 Limited which was notified to the Competition and Consumer Protection Commission (the "Commission") on 26 April 2018 (the "Proposed Transaction").

The Commission issued its Determination clearing the Proposed Transaction on [ ] August 2018.

In accordance with the terms of the proposals given by Uniphar to the Commission on [ ] August 2018 in relation to the Proposed Transaction which, in accordance with Section 20(3), Section 26(1) and Section 26(4) of the Competition Act 2002, as amended, have become commitments binding upon Uniphar (the "Commitments"), I hereby confirm Uniphar's compliance with the terms of the Commitments during the period commencing on [the date of the Determination] / [date of the previous certificate issued by Uniphar] and ending on the date hereof.

I sign this letter without liability on my part.

Yours faithfully,

\_\_\_\_\_  
[Name]  
[Executive Director Uniphar plc]



**SCHEDULE B**

[Relevant SISK Healthcare Headed Paper]

[date]

Ibrahim Bah  
Director  
Competition Enforcement and Mergers  
Competition and Consumer Protection Commission  
Bloom House  
Railway Street  
Dublin 1

**Merger Notification M/18/031 Uniphar/SISK Healthcare**

Dear Sir

I refer to Merger Notification M/18/031 in relation to the proposed acquisition by Uniphar plc ("Uniphar") of ROI Healthco IOM 2 Limited ("SISK Healthcare") which was notified to the Competition and Consumer Protection Commission (the "Commission") on 26 April 2018 (the "Proposed Transaction").

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In accordance with the terms of the proposals given by Uniphar to the Commission on [ ] August 2018 in relation to the Proposed Transaction which, in accordance with Section 20(3), Section 26(1) and Section 26(4) of the Competition Act 2002, as amended, have become commitments binding upon Uniphar (the "Commitments"), I hereby confirm SISK Healthcare's compliance with the terms of the Commitments during the period commencing on [the date of the Determination] / [date of the previous certificate issued by SISK Healthcare] and ending on the date hereof.

I sign this letter without liability on my part.

Yours faithfully,

\_\_\_\_\_  
[Name]

[Member of the SISK Healthcare Management Team]