

Completed acquisition by Spire Healthcare Limited of certain assets and business of St Anthony's Hospital in Surrey

ME/6444/14

The CMA's decision on reference under section 22(1) given on 24 September 2014. Full text of the decision published on 17 October 2014.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

Summary

1. **Spire Healthcare Limited (Spire)** acquired on 22 May 2014 all of the assets and business of St Anthony's Hospital in Surrey (**St Anthony's Hospital**) (the **Merger**). Both Spire and St Anthony's Hospital (together **the Parties**) supply acute private medical hospital services (**PMHS**) in the United Kingdom (UK).
2. As a result of the Merger, the enterprises constituting Spire and St Anthony's Hospitals ceased to be distinct. Spire submitted that the combined Spire and St Anthony's Hospital have a share of supply in excess of 25% if measured according to the number of private hospital beds [40–50] and operating theatres [30–40] in an area constituting a substantial part of the UK. Accordingly, it satisfies the test for a relevant merger situation set out in the Enterprise Act 2002 (**the Act**) and the Competition and Markets Authority (**CMA**) has jurisdiction to assess its competitive impact.
3. Prior to the Merger, the Parties overlapped in the supply of PMHS in [✂] parts of Surrey, West Sussex and Greater London. In their hospitals in this area, the Parties supply inpatient, outpatient and day-case patients PMHS in almost all clinical specialities and overlapped in 18 of those. The Parties provide PMHS to patients who fund the services themselves (**Self-pay patients**), patients funded by private medical insurance (**PMI**) (**PMI patients**), and patients funded by the National Health Service (**NHS**)¹ (**NHS patients**).

¹ For ease of reference, NHS in this decision refer to different organisations under the NHS umbrella and with different levels of autonomy, such as NHS foundation trusts, NHS trusts and Clinical Commissioning Groups.

4. In terms of the product frame of reference, this decision follows the CMA's decisional practice² and has assessed the competitive impact of this Merger at the whole hospital and at each individual specialty levels. It distinguishes between inpatients, outpatients and day case-treatments. Also, the assessment has also taken into account possible differing effect by patient type, on Self-pay, PMI and NHS patients without concluding on whether each of these types of patients form a separate frame of reference.
5. The CMA considers that the geographic frame of reference in relation to the provision of PMHS is local in scope. Patients often choose between hospitals close to their homes. Negotiations between PMI providers and hospitals will be influenced by the need of those PMI providers with national coverage to offer a sufficiently extensive network of hospitals across the UK and will be based primarily on the local competition conditions. The CMA has assessed the Merger based on catchment areas of [5–15] miles for St Anthony's Hospital, and between [10–20]–[10–20] miles in the case of Spire hospitals. In particular the CMA notes that the estimated catchment area for Spire Gatwick Hospital is [10–20] miles.
6. NHS Organisations are responsible for commissioning services at a local level. In this case the CMA did not need to conclude on the exact geographic scope in relation to NHS contracts but it also notes the local nature of those NHS commissioned services.
7. In assessing the competitive impact of this Merger, the CMA has assessed: first, the level of pre-Merger competition between the Parties; second, the likely impact on competition at whole hospital level; and third, the likely impact on competition at specialty level.
8. As to the extent of competition between hospitals, the CMA has taken the following main factors into account: the location and distance between hospitals, the hospitals' services, extent of pre-Merger competition (for example as reflected in internal documents) and the presence of consultants with practicing rights in both Parties' hospitals. Also, the CMA has looked at the extent to which limited spare capacity might constrain the Parties (and other competitors) from competing effectively. Evidence before the CMA indicates that the Parties competed prior to the Merger.
9. At the whole hospital level, the CMA has focused on the competitive impact resulting from the loss of the constraint of Spire Gatwick Park on St Anthony's Hospital and vice-versa. It found that following the Merger all types of patients

² These include cases decided by the Office of Fair Trading (OFT) and the Competition Commission (CC) which merged on 1 April 2014 to create the CMA.

will have sufficient alternatives, and these competing hospitals will confer in aggregate sufficient constraint on St Anthony's Hospital. These alternatives include Ramsay Ashtead Hospital, Aspen Parkside Hospital and BMI Shirley Oaks Hospital in addition to other smaller units such as an NHS private patient units (**PPU**) at Epsom General Hospital NHS Trust and BMI Coombe Wing at Kingston Hospital. A similar conclusion was reached when assessing the removal of St Anthony's Hospital constraint on Spire Gatwick Park. The CMA considered that the aggregated constraint from two main and several smaller but viable competitors but in aggregate would be sufficient to prevent the realistic prospect of a substantial lessening of competition (**SLC**) for inpatient services. Therefore, the CMA considers that the constraints on St Anthony's Hospital and Spire Gatwick Park respectively from several competing hospitals, when considered in aggregate for each of the Parties' hospitals, will be sufficient to prevent a realistic prospect of an **SLC** at a hospital level for inpatient services.

10. The CMA has also analysed overlaps between St Anthony's Hospital and Spire Gatwick Park at specialty level, particularly the constraint from St Anthony's Hospital on Spire Gatwick Park. Those hospitals overlap in 18 specialties. The CMA has applied a cautious filter to exclude those specialties unlikely to raise competition concerns. It filtered out those specialties with a combined overlap below 40% and an increment of less than 10%, noting that focusing on individual specialties takes into account some of the differentiation between fascia and that the threshold of 40% is consistent with the threshold using in the filtering undertaken in the CMA Market Investigation. This cautious preliminary filter excluded ten specialties: general medicine, neurology, neurosurgery, ophthalmology, plastic surgery, maxillofacial and pain management, cardiology, radiology and rheumatology.
11. Further, the CMA also found that there was minimal geographic overlap of patients between the Parties' catchment areas in relation to five other specialties which were, then, dismissed. These were: ear, nose and throat (ENT), gastroenterology, gynaecology, haematology, oral surgery. Finally, the close analysis of the remaining three specialties (orthopaedics, general surgery and urology) where there was greater overlaps led the CMA to dismiss any remaining competition concerns.
12. In particular, the assessment took account of those clusters of patients around Reigate, Sutton and south of Croydon. The CMA believes that BMI Shirley Oaks Hospital, Ramsay Asthead Hospital where pre-Merger Self-pay patients went to both hospitals and Ramsay North Downs Hospital would provide in aggregate sufficient constraint on the merged entity.

13. Based on the evidence available to the CMA, as to each of the last three overlapping specialties, the CMA considers that no realistic prospect of a substantial lessening of competition (**SLC**) for Self-pay patients will arise as a result of the Merger.
14. Given that the CMA does not consider there to be a realistic prospect of an SLC at the local level on a whole hospital or a specialty basis for Self-pay patients, the CMA does not consider that there is a realistic prospect of an SLC with respect to negotiations with PMI providers.
15. With respect to day-case and outpatient services, in the CMA Healthcare Market Investigation, it was found that there was scope for hospitals providing inpatient care to switch capacity into the provision of day-patient and outpatient service. The CMA therefore considers that the constraints on the Parties' day-case and outpatient services are likely to be at least as strong as the constraints on the Parties' inpatient services. As the CMA has not found a realistic prospect of an SLC inpatient services, the CMA's conclusion extends to day-case and outpatient services.
16. The CMA considers that the alternative facilities available for NHS contracts is likely to be wider than for privately funded services, since NHS hospitals also compete for this work. The CMA therefore does not consider there to be a realistic prospect of an SLC for NHS funded contracts.

Assessment

Parties

17. Spire Healthcare Limited is ultimately controlled by funds managed or advised by Cinven Limited (**Cinven**). In addition to Spire Healthcare Limited, Cinven controls several other companies trading under the Spire Healthcare brand (together included under **Spire**). Spire is the second largest private hospital operator in the UK. It has 38 hospitals and 12 satellite clinics located throughout England, Wales and Scotland.
18. Spire provides PMHS comprising inpatient, outpatient, and day-case treatments across many specialties to patients funded privately or by the NHS. In 2013, Spire's total annual revenues was £764.5 million.
19. The target comprises all of the assets of St Anthony's Hospital in Surrey (**St Anthony's Hospital**). St Anthony's Hospital offers private and NHS PMHS comprising inpatient, outpatient and day-case treatments across many specialties to patients. Prior to this transaction, St Anthony's Hospital was controlled by the Congregation of the Daughters of the Cross of Liege (the

DOC), a registered charity and private company limited by guarantee incorporated in England and Wales.

Transaction

20. By way of an asset acquisition on 22 May 2014, Spire acquired multiple assets, contracts, IT systems, stock, business information, records and goodwill relating to the business, comprising St Anthony's Hospital.

Jurisdiction

21. As a result of the Merger, the enterprises constituting Spire and St Anthony's Hospital ceased to be distinct. Prior to the Merger, the Parties overlapped in the supply of PMHS in the UK. Spire submitted that the combined Spire and St Anthony's Hospital have a share of supply in excess of 25% if measured according to the number of private hospital beds [40–50] and operating theatres [30–40] in an area covering parts of Surrey, West Sussex and Greater London with an estimated population, according to Spire, of over 1.3 million inhabitants. The CMA considers that this area constitutes a substantial part of the UK.
22. The statutory four month period within which the CMA may make a decision pursuant to section 22 of the Act expires on 24 September 2014 (Spire and the CMA agreed to extend the statutory deadline by three working days under section 25 (1) of the Act). The 40-working day deadline under section 34ZA of the Act expires on 25 September 2014.
23. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created on the basis of section 23(2) of the Act.

Background

24. On 2 April 2014, the CMA published its report on the market investigation in the Private Healthcare sector.³ In this decision, the CMA has taken account of the approach and findings of the CMA Private Healthcare Market Investigation. It also notes that the focus and purpose of a market investigation, as well as the legal test, is different to that of a merger assessment under Part 3 of the Act.

³ *CMA Private healthcare market Investigation final report*, 2 April 2014, CMA25 (CMA Private Healthcare Market Investigation)

Product frame of reference

25. The CMA considers that market definition is a useful tool, but not an end in itself. Market definition provides a framework for assessing the competitive effects of the merger and involves an element of judgment. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of a merger in a mechanistic way, as it recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.⁴
26. Spire submitted that prior to the Merger, the Parties overlapped in the supply of PMHS inpatient, outpatient and day-case treatments across a range of specialties to Self-pay, PMI and NHS-funded patients in the South and Southwest of London and North Surrey.⁵
27. It submitted that the relevant frame of reference in this case is all hospitals (offering both private and NHS treatments) and specialist clinics.
28. The CMA normally frames the product frame of reference by reference to the demand side.⁶ In this case, on the demand side, the CMA considers that generally individual hospital services are not substitutable for a patient (or a GP or consultant that may be determining the appropriate service based on the patient's clinical needs). As such, the starting point for product market frame of reference is one of narrowly delineated product markets of each hospital service.
29. Nevertheless, the CMA has considered whether there are supply side arguments for widening the product frame of reference.
30. In its Private Healthcare Market Investigation, the CMA found that there is a significant degree of substitution across treatments within the same specialty, but that there is more limited supply-side substitution across treatments between specialties.⁷ This is consistent with the CMA's finding in cases involving NHS foundation trust mergers.⁸ The CMA therefore considers each

⁴ [Merger Assessment Guidelines](#), a joint publication of the Competition Commission and the Office of Fair Trading, September 2010 (adopted by the CMA) (**Merger Assessment Guidelines**, paragraph 5.2.2).

⁵ Merger Notice, paragraph 13.1.

⁶ Merger Assessment Guidelines, paragraph 5.2.6.

⁷ CMA Private Healthcare Market Investigation, paragraphs 5.40 and 5.53.

⁸ [CMA's decision](#) of 14 May 2014 on the anticipated acquisition of Heatherwood and Wexham Park Hospitals NHS Foundation Trust by Frimley Park Hospital NHS Foundation Trust (**Heatherwood-Wexham/Frimley Park**).

specialty (including the various treatments within that specialty) to be a separate frame of reference.⁹

31. In its Market Investigation, the CMA also found that the ability of day-case only and outpatient clinics to switch into the provision of inpatient treatments is limited. This is in part due to the additional facilities required to provide inpatient care and also as inpatient care requires other additional inputs such as certain staff. As a result, asymmetric constraints appear to exist between hospitals providing inpatient care and day-case only and outpatient clinics and therefore, for each specialty, inpatient, day-case patients and outpatient care are considered to be in separate frames of reference.¹⁰
32. The CMA has previously considered privately-funded medical treatments to be in a separate product market from NHS-funded medical treatment.¹¹ The CMA has not received any evidence to suggest that it should depart from this approach.
33. [The Merger Assessment Guidelines](#) states that the CMA may sometimes define relevant markets for separate customer groups if the effects of the merger on competition to supply a targeted group of customers may differ from its effects on other groups of customers, and require a separate analysis. This may happen when, for example, suppliers can target higher prices at customers willing to pay more.¹²
34. The CMA notes that the Parties provide services to Self-pay, PMI and NHS-funded patients. For Self-pay patients, the CMA notes that prices are determined by local competitive conditions. There are some list prices for treatments for Self-pay patients although the CMA has also obtained some evidence of there being scope for price negotiation. For example, the Parties told the CMA that they sometimes 'price match' competitors. For PMI patients, Spire submitted that the price charged by a hospital operator and reimbursed by a PMI provider for a treatment provided to an insured patient is negotiated bilaterally at national level between a hospital or hospital group and each PMI

⁹ CMA Private Healthcare Market Investigation, paragraph 5.53. A report on the anticipated merger of The Royal Bournemouth and Christchurch Hospital NHS Foundation Trust and Poole Hospital NHS Foundation Trust published by the Competition Commission on 17 October 2013, (**Poole/Bournemouth**) paragraphs 24(c), 5.22 and 5.26. Also, Heatherwood-Wexham/Frimley Park, paragraphs 37 and 38.

¹⁰ This is consistent with Heatherwood-Wexham/Frimley Park; CMA Private Healthcare Market Investigation, paragraphs 5.40 and 5.52 and CMA guidance on the review of NHS mergers (**NHS Merger Guidance**), 31 July 2014, CMA 29, paragraph 6.38.

¹¹ CMA Private Healthcare Market Investigation, paragraph 5.52. Also, Poole/Bournemouth, paragraphs 24(c), 5.22 and 5.26; Heatherwood-Wexham/Frimley Park, paragraphs 37 and 38.

¹² On defining customer markets, the Merger Assessment Guidelines state that [t]he [CMA] may sometimes define relevant markets for separate customer groups if the effects of the merger on competition to supply a targeted group of customers may differ from its effects on other groups of customers, and require a separate analysis. This may happen for example, if suppliers can target higher prices at customers willing to pay more, or when competition for customers differs significantly between different customer groups.' (Paragraph 5.2.28).

provider. However that national pricing policy is also influenced by the competitive conditions at local level. The Parties also supply PMHS to NHS patients. For those patients the treatment or medical procedure is free at the point of delivery.

35. The CMA therefore considers that the competitive framework and the price setting mechanism differ for Self-pay, PMI and NHS funded patients. However, consistent with the findings of the CMA Private Healthcare Market Investigation, the CMA has not found it necessary to further segment the frame of reference by customer group but has considered possible differential effects of the merger on different customers in the competitive assessment as appropriate.¹³

NHS contracts

36. Individual local NHS trusts and Clinical Commissioning Groups (**NHS Organisations**) contract with the Parties to outsource some treatments or procedures that either those NHS Organisations do not provide themselves or to provide some additional capacity when required. The Parties therefore compete for contracts with NHS Organisations. The CMA considers this to be a separate frame of reference.

Geographic frame of reference

37. In its Private Healthcare Market Investigation the CMA found that most private healthcare patients have a preference to travel shorter distances, everything else being equal, and to choose local consultants and hospitals to receive medical treatment, suggesting the market for PMHS is local.¹⁴
38. A common approach used by the CMA to analyse the geographic area in which a business derives a large percentage of their customers (in this case, patients) is to identify an appropriately bounded catchment area. The OFT and the CC have used this approach in past hospital mergers.¹⁵
39. Spire submitted that a hospital-centred catchment area does not correctly assess patient choice and that a more accurate reflection of patient choice is demand-centred analysis, which attempts to focus more precisely on the alternatives available from the patients' perspective.

¹³ See further paragraph 25 above and CMA Private Healthcare Market Investigation, paragraphs 2.45 and *ff.*

¹⁴ CMA Private Healthcare Market Investigation, paragraphs 2.56.

¹⁵ OFT's decision of 14 September 2010 on the completed acquisition by General Healthcare Group of four Abbey Hospitals and Transform Holdings Limited (**GHG/Abbey Hospitals (four hospitals)**), paragraphs 23 and *ff.* See also, Merger Assessment Guidelines, paragraph 5.2.22.

40. The CMA notes that assessing the geographic scope is a useful tool, but not an end in itself. Identifying the relevant geographic market involves an element of judgment and the boundaries of the market do not determine mechanically the outcome of the CMA's analysis of the competitive effects of the Merger.¹⁶ As the CMA's Merger Assessment Guidelines notes, a catchment area will typically be narrower than the geographic market identified using the hypothetical monopolist test.¹⁷ The CMA takes this into account in its competitive assessment and uses the isochrones based on catchment areas only as the starting point of reference for its competitive assessment. As part of the assessment, we also considered the constraints posed on the Parties by rivals located outside of the isochrones as appropriate.
41. For St Anthony's Hospital and Spire hospitals, following the approach taken in the CMA Private healthcare Market Investigation, the Parties estimated the catchment area over which each hospital draws 80% of its inpatients, measuring the road distance between patient's home and hospital postcodes. The Parties calculated catchments aggregating all specialities offered at the relevant hospital for PMI inpatients, using records of inpatient visits over 2009-2013. This is similar to the approach taken by the CMA in its Private Healthcare Market Investigation.¹⁸ The estimated catchment area of St Anthony's Hospital for aggregated specialties is [5–15] miles and Spire Gatwick Park's is [10–20] miles. The estimates of the distance PMI patients travel provided to the CMA by PMI providers are broadly similar to Spire's calculations.
42. In addition, the Parties have calculated catchments on a specialty level for PMI inpatients and Self-pay patients separately, using data on inpatients over 2009-2013. The CMA acknowledges that there are some differences in the road distance between specialties and patient type, particularly for St Anthony's Hospital,¹⁹ but road distances across all specialties for PMI and Self-pay patients per hospital appear to be sufficiently representative of the typical road distance of the Parties' patients. For this reason the CMA has used catchment areas of [5–15] miles for St Anthony's and [10–20] miles for Spire Gatwick Park's to draw isochrones around the respective sites.
43. With respect to PMI providers, as noted above, the prices hospitals charge PMI providers for an insured patient is negotiated bilaterally at national level

¹⁶ See paragraph 25 above. Also. Merger Assessment Guidelines, paragraph 5.2.2.

¹⁷ Merger Assessment Guidelines, paragraph 5.2.25.

¹⁸ CMA Private Healthcare Market Investigation, Appendix 6.5, paragraph 7.

¹⁹ For St Anthony's Hospital the catchment for gynaecology is [0–10] miles, whilst for cardiology and cardio-thoracic specialities the catchment areas [20–30] and [25–35] miles respectively. This data is based on PMI patients.

between a hospital or hospital group and each PMI. However, those negotiations will be influenced by the need of those PMI with national coverage to offer a sufficiently extensive network of hospitals across the UK and will be based primarily on the local competition conditions. The relevant frame of reference for the impact on competition of the merger on PMI providers is therefore local.

44. With respect to NHS contracts, the CMA notes that Clinical Commissioning Groups (**CCG**) are responsible for commissioning services for the population within a specified boundary.²⁰ The NHS Trusts outsourcing and contracting services from the Parties are all located near the Parties' hospitals. But the CMA did not find it necessary to conclude on a precise geographic market in the case of NHS contracts.

Conclusion on frame of reference

45. In this decision, the CMA has assessed the impact of the Merger on the basis of each specialty being in a separate frame of reference; inpatient services being in a separate frame of reference to day-case patients and outpatient services; and considering the impact of the merger on Self-pay patients, PMI patients and NHS patients.
46. The CMA has analysed competition for the provision of services for patients based on 80% catchment areas around each hospital. For St Anthony's Hospital the catchment used was [5–15] miles and for Spire Gatwick Park's the catchment was [10–20] miles.
47. With respect to prices for PMI patients, price is set through national negotiations between hospital providers and PMI providers, as noted above, and this is ultimately influenced by the local market conditions. As such, the impact of the Merger on PMI provider negotiations will be predicated on the assessment on local competition for patients, and as such it does not require a separate assessment in this case.
48. The CMA has assessed competition for commissioned services for NHS Organisations on a local basis, without needing to conclude on the exact geographic frame of reference.

²⁰ See [CCG maps](#).

Counterfactual

49. In this case, Spire submitted that the pre-Merger prevailing conditions of competition is the correct counterfactual. The evidence before the CMA suggests that this is the appropriate counterfactual.

Competitive assessment

Competition for private patients at a local level

50. Competition in the private healthcare sector can be characterised as a contest for control of the patient pathway, since the destination of the patient determines who receives payment for the patient's treatment.²¹ In general, hospital operators compete by positioning themselves in terms of quality, range and price in order to attract patients, as well as PMI providers, and indirectly to attract patients through targeting GPs, who can assist patients in their decision making about what hospital and/or consultant to choose; and consultants, who can be the driver of a patient's choice of hospital.²²
51. Quality indicates how well a given treatment and the overall service are provided. This encompasses various aspects of a competitive offering such as clinical expertise and health outcomes, nursing care (including the nurse to patient ratio), waiting times, comfort and quality of accommodation. Some quality measures are therefore hospital wide, whilst others are specialty specific.
52. Range indicates which and how many treatments are provided by the hospital, including whether complex treatments are offered.
53. The various aspects of quality and range can be varied over differing time periods. Some aspects of quality, such as nursing ratios, can be varied relatively quickly. The introduction of new specialties, which may require significant capital investments, may require substantially longer timeframes. Changes in quality and range may also occur by consolidating some service offerings to a single site or discontinuing provision of services.
54. The CMA has examined the possibility that the Merger would give rise to a substantial lessening of competition, which could lead to the following adverse effects:

²¹ CMA Private Healthcare Market Investigation, paragraphs 2.39 and *ff.*

²² CMA Private Healthcare Market Investigation, paragraph 6.384.

- (a) For Self-pay patients, given that prices are set with respect to local competitive conditions, the merged entity could unilaterally impose a price increase. The CMA notes that there are some list prices for treatments for Self-pay patients, with some scope for negotiation on these prices on a case-by-case basis based on the patient's condition and sometimes there is 'price matching' of competitors. However, the CMA does not have evidence of the Parties applying differential prices based on customer location.
 - (b) For prices for PMI funded patients, negotiations with the merged entity over prices for treatment of insured patients take place at the national level but, consistent with the findings of the CMA Private Healthcare Market Investigation, may be impacted by the reduction in local competition. The Merger may lead to an increase in bargaining power by the combined entity, due to the reduction in the PMI providers' outside options at the local level.
 - (c) For all private patients (that is, Self-pay and PMI patients), the merged entity may have the incentive to deteriorate the quality or range of its competitive offering in some specialties or across specialties. Since some quality measures are hospital wide whilst others are specialty specific, the CMA has considered the possibility of a deterioration of quality on a hospital wide basis and on a specialty basis.
55. The CMA has first considered the extent of pre-Merger competition between the Parties, which will be lost as a result of the merger at hospital-wide level and at specialty level. When services are differentiated, as is the case here, unilateral effects concerns are more likely to arise if the merging parties are close substitutes.²³ Where this is the case, the Parties will recapture a significant share of the sales lost in response to a price increase or degradation of quality post-Merger, making these actions less costly.
56. The CMA has assessed the closeness of competition between the Parties' hospitals, as well as between the parties' and rivals' hospitals, both in terms of each hospital's product offerings and in terms of each hospital's location.
57. In assessing the extent of competition between hospitals, the CMA has taken the following factors into account:

²³ Merger Assessment Guidelines, paragraph 5.4.7.

- (a) the location of the hospitals and distance between them
 - (b) the hospital's services (in terms of inpatient, day-case, outpatient care, specialties and ICU provided, if any) and the quality of the service provided
 - (c) the extent to which the hospitals have competed for patients pre-Merger (as measured by the significance of the catchment areas' overlap)
 - (d) references to competition in the Internal documents of the Parties
 - (e) the extent to which consultants have practicing rights in both of the Parties' hospitals
 - (f) the extent to which capacity constrains the scope for competition
58. The focus of the assessment below is on the Parties' inpatient services. With respect to day-case patient and out-patient services, which are in a separate frame of reference to inpatient services, the CMA's Market Investigation found that there was scope for hospitals providing inpatient care to switch capacity into the provision of day-patient and outpatient service²⁴. The CMA therefore considers that the constraints on the Parties' day-case and outpatient services are likely to be at least as strong as the constraints on the Parties' inpatient services. Accordingly, if the CMA does not consider there to be a realistic prospect of an SLC in the provision of inpatient services, then it follows that the same conclusion will apply for day-case and outpatient services.

Pre-Merger competition between the Parties

59. Spire submitted that all Spire hospitals are either outside St Anthony's Hospital catchment area or any overlaps in the catchment areas are not competitively significant. It supported its view by submitting maps showing the St Anthony's Hospital and Spire Gatwick Park's catchment areas and showing the location of Self-pay and PMI inpatients. Spire submitted that there were limited areas from which a significant number of patients of both St Anthony's Hospital and any of Spire's hospitals are drawn.
60. The CMA has considered the catchment area overlaps on the basis of 80% hospital-centred catchment areas calculated over aggregated specialties for PMI inpatients. On this measure, St Anthony's Hospital catchment area does not contain any of the Spire hospitals, however it does overlap with several of

²⁴ CMA Private Healthcare Market Investigation, paragraph 5.52.

Spire's hospital's catchment areas: Thames Valley, Bushey and Gatwick Park. St Anthony's Hospital is within Spire Gatwick Park's catchment area.

61. The CMA has assessed the significance of the overlap between the hospitals' catchment areas by measuring the percentage of the catchment area of one of the Parties which is within the catchment area of the other Party.²⁵ For St Anthony's Hospital and both Spire Thames Valley and Bushey these measures are [less than 5].²⁶ The overlap between St Anthony's Hospital and Spire Gatwick Park, however, is relatively high in terms of St Anthony's Hospital's patients, accounting for [60–70] of St Anthony's Hospital's PMI inpatients (and [less than 5%] of Spire Gatwick Park's PMI inpatients).
62. The evidence above points to limited pre-existing competition between St Anthony's Hospital and Spire Thames Valley or Spire Bushey. The focus of the assessment below is therefore on the potential for a loss of competition between St Anthony's Hospital and Spire Gatwick Park.

Location and distances

63. Spire submitted that Spire Gatwick Park and St Anthony's Hospital are too far apart to compete with one another in any meaningful way. Some consultants who spoke to the CMA agreed with this statement.
64. St Anthony's Hospital and Spire Gatwick Park are located in two densely populated areas. The road distance between them is 16.8 miles. St Anthony's Hospital is located at North Cheam in Surrey, north of the M25 radial motorway and adjacent to south west of Greater London. This is an affluent and heavily populated area with multiple private and NHS hospitals in St Anthony's Hospital's catchment area. The combination of its location, in the gateway between central London and the south coast of England and specialised services are stressed in St Anthony's Hospital marketing materials and internal documents.²⁷
65. On the other hand, between Spire Gatwick Park and St Anthony's Hospital there are also some other heavily populated urban conurbations (such as Reigate, Redhill and Sutton and their surroundings) in addition to good transport links (such as the M23 and the A217 which connects both hospitals and pass through some of those urban areas). This is consistent with what

²⁵ OFT's decision of 18 June 2008 on the completed acquisition by Spire Healthcare Limited of Classic Hospitals Group Limited, paragraph 19.

²⁶ Data on PMI inpatient visits over 2009-2013.

²⁷ 'We are the only independent hospital between central London and the south coast to provide Level 3 critical care' ([St Anthony's Hospital website](#)) as of 12 September 2014 and Information Memorandum prepared by Ernst & Young LLP titled 'Project Mercury', September 2013, pages 6 and 14.

some competitors have told the CMA: the Parties are relatively easily accessible substitutes for some of those patients. Those competitors noted that Spire Gatwick Park has transport links with Croydon, near St Anthony's Hospital location and in practice, the Parties were only 36 minutes' drive time apart. Consequently, St Anthony's Hospital and Spire Gatwick Park are viewed as substitutes by (at least some) patients.

66. In contrast, with the above view of the Parties, the CMA considers that the evidence points to the possibility that for some patients both hospitals are realistic alternatives to each other. In particular, the CMA notes that Spire Gatwick Park's catchment areas for individual specialties are consistently around [10–20] miles, which supports using this distance in assessing how far Spire Gatwick Park's patients travel and the alternative hospitals available to them. The CMA also notes that the significance of the catchment area overlap between Spire Gatwick Park and St Anthony's in terms of proportion of patients included indicates that there are patients who are in both Parties' catchment areas and who can therefore choose between them, suggesting that the two hospitals compete with one another for at least some patients.

Hospitals' services

67. The CMA has considered how comparable St Anthony's and Spire Gatwick Park's respective product offerings are:
- (a) Both St Anthony's Hospital and Spire Gatwick Park offer inpatient, day-case and outpatient care.
 - (b) St Anthony's Hospital has an intensive care unit (ICU) Level 3²⁸ and Spire Gatwick Park has a Level 2, also defined as high dependency unit (HDU).²⁹
 - (c) Both St Anthony's Hospital and Spire Gatwick Park offer the same 18 specialties, namely: cardiology, ear nose and throat (ENT), gastroenterology, general medicine, general surgery, gynaecology, haematology, neurology, neurosurgery, ophthalmology, oral surgery, orthopaedics, plastic surgery, radiology, urology, rheumatology, maxillofacial surgery and pain management.

²⁸ An intensive care unit (ICU) or intensive treatment unit (ITU) provides intensive care medicine. They care for patients with the most severe and life-threatening illnesses. They require constant, close invasive monitoring and support from specialist equipment and medication to ensure the proper functioning of body functions. Nurses and doctors in those areas are specially trained.

²⁹ High dependency units (HDU) are wards for people who need more intensive observation, treatment and nursing care than is possible in a general ward but slightly less than in intensive care. The level of care is slightly reduced as the patient is not in such a critical state as a patient requiring an intensive care unit.

(d) Third parties, primarily consultants, noted that St Anthony's Hospital has a highly regarded and respected offering across specialties, some in fact commented a higher quality offering than Spire Gatwick Park.

68. The comparison of St Anthony's Hospital and Spire Gatwick Park's services suggests that the two facilities have a comparable product offering. The only material difference relates to the higher level of the ICU at St Anthony's Hospital. Some consultants noted its relevance when choosing a hospital for a patient with higher risks.

Extent of pre-Merger competition

69. With respect to the extent to which the St Anthony's Hospital and Spire Gatwick Park have competed for patients in the past, the CMA notes that hospitals compete for patients directly, and indirectly through targeting GPs, who can assist patients in their decision making, about what hospital and/or consultant to choose; and consultants, who are often the driver of a patient's choice of hospital. Spire's internal documents are consistent with competitors and consultants' views that the presence of consultants with good reputation in the local area and well-known to the local GPs, often because of their work in local NHS hospitals, is an important driver to attract patients to private hospitals.
70. The CMA has reviewed the location of the GPs targeted by the Parties in their attempts to gain referrals to consultants with practicing rights in their hospitals. It notes that Spire Gatwick Park has targeted GPs within and on the periphery of St Anthony's Hospital's catchment area. These include GP practices located in [REDACTED]
71. With respect to consultants, the CMA notes that St Anthony's and Spire Gatwick Park have 12 overlapping consultants in nine specialties out of a total number of 350 consultants. Third parties competitors have confirmed that the consultants practising at their hospitals and at St Anthony's Hospital or Spire Gatwick Park do not often practice at the hospital of the other merger Party but at other private hospitals. Also that consultants practising at the Parties' hospitals have their main NHS work based at different hospitals. St Anthony's Hospital's consultants are often based at St George's NHS Trust (London) and consultants practising at Spire Gatwick Park are often based at East Surrey Hospital at Redhill (near Reigate, Surrey). This suggests that both sets of consultants attract mostly patients from different geographic areas and are known to GP's from different geographic areas.
72. The CMA has also considered the internal documents provided by the Parties to assess the extent they regard their respective hospitals as competing with

each other. In this respect, the Parties submitted that the internal documents of both Parties contain few references to each other, which the Parties argue is evidence of limited competition between them. The CMA notes that there are more frequent (albeit also limited) references to other competing hospitals in the area in the documents presented to the CMA.

73. The CMA has finally considered whether capacity constraints may limit the extent of competition between the Parties' hospitals. The Parties submitted that neither St Anthony's Hospital nor Spire Gatwick Park is capacity constrained. The CMA therefore considers that capacity constraints do not limit competition between these hospitals.
74. Based on the evidence presented above, the CMA considers that pre-Merger St Anthony's Hospital and Spire Gatwick Park were competing for at least some patients.

Competitive constraints at hospital level on St Anthony's Hospital

75. Spire submitted that Spire Gatwick Park is not in St Anthony's Hospital catchment area, hence there is no reduction in the number of hospitals offering PMHS in St Anthony's Hospital catchment area as a result of the merger.
76. The Parties submit that the following hospitals will provide sufficient competitive constraint on St Anthony's Hospital post-Merger: BMI Shirley Oaks Hospital, Ramsay Ashtead Hospital, The New Victoria Hospital, Aspen Parkside Hospital, Epsom General Hospital Northey Suite (a PPU) and The BMI Coombe Wing at Kingston Hospital.
77. The CMA notes that these hospitals are closer to St Anthony's Hospital than Spire Gatwick Park: they are located around St Anthony's Hospital at a distance between 5 and 8 miles.
78. Individually each of these hospitals overlaps with St Anthony's Hospital in at least 12 specialties. Several of the hospitals have ICU Level 2 services, similar to the ICU currently available pre-Merger to Spire's patients.

The largest hospitals are Ramsay Ashtead Hospital, Aspen Parkside Hospital and BMI Shirley Oaks, with around 50 or more beds each. The CMA also notes the presence of smaller private hospitals belonging to same national chains, namely Ramsay North Downs Hospital and BMI Coombe Wing at Kingston Hospital, and a PPU at Epsom General Hospital NHS Trust.

79. In light of the above, the CMA considers that the constraints on St Anthony's Hospital from these competing hospitals in aggregate will be sufficient to prevent a realistic prospect of a substantial lessening of competition at a hospital level for inpatient services.

Competition constraints at hospital level on Spire Gatwick Park

80. Spire submitted that none of Spire Gatwick Park's PMI inpatients in its catchment areas would be subject to a 5-to-4 or worse reduction in the number of hospitals offering PMHS as a result of the Merger.
81. The Parties identified the following competing hospitals in Spire Gatwick Park's catchment area and provided shares of capacity in Spire Gatwick Park's catchment based on beds and operating theatres. Shares of capacity based on beds may be used as a proxy for the capacity of the rival hospital to accommodate additional patients (although they do not show the capacity currently available).³⁰

Competing hospitals in Gatwick Park's catchment area	Hospital name	Shares of capacity	
		Beds	Operating theatres
The DOC	St Anthony's Hospital	[20–30%]	[10–20%]
Spire	Spire Gatwick Park	[10–20%]	[10–20%]
Combined		[40–50%]	[30–40%]
Ramsay	1) North Downs, 2) Ashtead	[20–30%]	[10–20%]
Nuffield	Haywards Heath	[10–20%]	[10–20%]
McIndoe	McIndoe Surgical Centre	[0–10%]	[10–20%]
Epsom & St. Helier University Hospitals NHS Trust	Epsom General Hospital The Northey Suite	[0–10%]	[10–20%]
Royal Marsden Hospital NHS Foundation Trust	The Royal Marsden Hospital Robert Tiffany Ward	[0–10%]	[0–10%]
Surrey & Sussex Healthcare NHS Trust	East Surrey Hospital Brook Ward	[0–10%]	[0–10%]
Total		100%	100%

Source: CMA based on information submitted by the Parties and third parties.

³⁰ The CMA notes that shares of capacity by operating theatres can be skewed by PPU's which do not have dedicated patient theatres but have access to the hospital theatres.

82. The largest rival hospitals by capacity (ie number of beds) and patient volumes are Ramsay Ashtead and Nuffield Haywards Heath.
83. Ramsay Ashtead, located to the north in Leatherhead, 14.4 miles from Spire Gatwick Park, lies geographically between Spire Gatwick Park and St Anthony's Hospital. It has a comparable product offering to Spire Gatwick Park, as it offers all 18 of the overlapping specialties and has a high dependency unit. Whilst Ramsay Ashtead does a high proportion of NHS work, Ramsay did not raise concerns regarding capacity constraints limiting its capacity for private patients.
84. Nuffield Haywards Heath is located 16.0 miles south of Spire Gatwick Park. Nuffield Haywards Heath has a comparable product offering to Spire Gatwick Park in terms of specialties offered and availability of a HDU [✂].
85. The CMA also notes the presence of several smaller facilities within Spire Gatwick Park's catchment area which overall provide some constraint: Ramsay North Downs (14.6 miles from Spire Gatwick Park) and McIndoe Surgical Centre specialises in four specialties³¹ [END NOTE 1]ⁱ (around 7 miles from Spire Gatwick Park). There is also a small PPU, Epsom General Hospital The Northey Suite (15.2 miles from Spire Gatwick Park), although the CMA notes that it does not have any dedicated private patient theatres³², and there is some evidence suggesting that patients may not view private patient units as alternatives to private hospitals.³³
86. None of the facilities considered themselves to be capacity constrained so as to limit competition for private patients.
87. Spire submitted evidence that [✂]
88. The CMA considers that the constraints on Spire Gatwick Park from these competing hospitals, when considered in aggregate, will be sufficient to prevent a realistic prospect of a substantial lessening of competition at a hospital level for inpatient services. In particular, the CMA notes that St Anthony's Hospital is geographically further away from Spire Gatwick Park than the other competing hospitals in the catchment areas.

³¹ ENT, ophthalmology, oral surgery and cosmetic surgery.

³² The Northey Suite has no dedicated private patient theatre, but private patients do have access to main theatres (5) and day case theatres (2). In the CMA Private Healthcare Market Investigation, a number of NHS Trusts emphasised that where constraints arose, for example in terms of access to theatres, NHS patients would always be prioritised (CMA Private Healthcare Market Investigation, paragraph 6.193)

³³ The CMA Private Healthcare Market Investigation's survey indicated that most patients have a preference for being treated at a private hospital compared with a PPU.

Specialty assessment

89. The CMA considers that the conditions of competition may vary at specialty level, for example because not all hospitals provide the same specialties, and that some competitive parameters can be varied at a specialty level. For example, prices to Self-pay patients can be altered as a result of the merger within some specialties. Alternatively or in addition, the quality of the service offering in one specialty may worsen as a result of the merger but not in others. The CMA has therefore considered the overlapping specialties at St Anthony's and Spire Gatwick Park.
90. Using the 80% catchment areas calculated for PMI inpatient on a specialty basis, St Anthony's Hospital and Spire Gatwick Park catchment areas overlapped for all 18 specialties.
91. As a starting point for the analysis, the CMA has assessed data submitted by the Parties and third parties on admissions at a specialty level to estimate shares of supply by specialty within Spire Gatwick Park's catchment area.
92. Spire submits that market shares alone are a potentially misleading indicator of competition. It submitted that a focus on shares does not take into account patient choice, the low number of patients treated within some specialties, or the ability of hospitals quickly to introduce new specialties, and since few areas of the UK have extensive numbers of hospitals, it is potentially easy for a hospital to have a material share, but still face important competitive constraints.
93. The CMA considers that shares of supply do offer some indication of the extent of competition between the merger parties and has used low shares of supply to filter out specialties which are unlikely to present any competition concerns. As such, the CMA has focused on specialties in which post-merger the combined entity will have shares of supply by admissions of at least 40% and an increment of at least 10%, noting that focusing on individual specialties takes into account some of the differentiation between fascia and that the threshold of 40% is consistent with the threshold using in the filtering undertaken in the CMA Market Investigation.³⁴ The ten specialties filtered out at this first stage were: general medicine, neurology, neurosurgery, ophthalmology, plastic surgery, maxillofacial and pain management, cardiology, radiology and rheumatology.

³⁴ CMA Market Investigation, paragraph 6.158

94. The result of this filtering left eight specialties for further analysis (table 1).

Table 1: Shares of supply by specialty within Spire Gatwick Park's catchment area

Hospital name	St Anthony's	Combined Entity	Spire Gatwick Park	Epsom General Hospital The Northey Suite	Ramsay, Ashtead Hospital	Ramsay, North Downs Hospital	East Surrey Hospital Brook Ward	McIndoe Surgical Centre	Nuffield Health Haywards Heath Hospital
Ear, Nose & Throat	[10-20]	[40-50]	[20-30]	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]	[30-40]
Gastroenterology	[10-20]	[60-70]	[40-50]	[0-10]	[10-20]	[0-10]	[0-10]	[0-10]	[10-20]
General Surgery	[30-40]	[60-70]	[30-40]	[0-10]	[10-20]	[0-10]	[0-10]	[0-10]	[10-20]
Gynaecology	[10-20]	[40-50]	[30-40]	[0-10]	[10-20]	[0-10]	[0-10]	[0-10]	[20-30]
Haematology	[10-20]	[60-70]	[50-60]	[30-40]	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Oral Surgery	[30-40]	[50-60]	[20-30]	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]	[40-50]
Orthopaedics	[20-30]	[60-70]	[30-40]	[0-10]	[10-20]	[0-10]	[0-10]	[0-10]	[0-10]
Urology	[20-30]	[60-70]	[30-40]	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]	[20-30]

Source: CMA assessment based on the Parties and third parties' submissions.

95. The CMA next considered the extent of the overlap between the Parties (in terms of number of patients by postcode in the overlap areas) in each of these specialties using maps provided by the Parties showing the locations of their Self-pay patients as well as all private patients.

96. In its assessment of these maps, the CMA found that there was minimal geographic overlap between the parties in the areas from which both St Anthony's Hospital and Spire Gatwick Park's draw patients in the following specialties: ENT, Gastroenterology, Gynaecology, Haematology and Oral Surgery.

97. Moreover, for the five specialties listed above Spire Gatwick will continue to face a competitive constraint from Nuffield Haywards Heath (in ENT, Gastroenterology, Gynaecology, and Oral Surgery), Ramsay Ashtead (ENT,

Gastroenterology and Gynaecology), Ramsay North Downs (ENT, Gastroenterology and Gynaecology) and Epsom General Hospital (ENT and Haematology).

98. Given the above evidence, the CMA considers that the Parties did not compete closely before the Mergers in those five specialties and Spire Gatwick will in any event continue to face a competitive constraint from a range of hospitals in the local area after the merger. Therefore, these specialties are not considered further in this decision.
99. Below, the CMA has considered the constraints on the parties post-merger in the three specialties in which the maps suggest that the parties overlap more substantially, namely Orthopaedics, General Surgery and Urology.
100. In particular, the maps show a more substantial overlap between St Anthony's Hospital and Spire Gatwick Park's patients in these three specialties mainly in the areas [REDACTED]

Orthopaedics

101. The Parties submitted that Spire Gatwick Park had [REDACTED] orthopaedic Self-pay inpatients and [REDACTED] orthopaedic private inpatients in total between 2009 and 2013 in the area in which the Parties' catchment areas³⁵ overlapped. These represent around [0–10]% of Spire Gatwick Park's total private orthopaedic inpatients over the period).
102. The maps provided by the Parties show that the areas of greatest overlap between the Parties for Self-pay patients and orthopaedic patients overall are in the areas [REDACTED].
103. In these areas, the nearby alternative hospitals are BMI Shirley Oaks (located in Croydon) and the two Ramsay hospitals (North Downs, around 7 miles from south Croydon, and Ashted, around 12 miles from south Croydon).
104. The Parties each had [REDACTED] volumes of orthopaedic private patients in 2013: St Anthony's treated around [REDACTED] and Spire Gatwick Park treated around [REDACTED]. Evidence available to the CMA shows that the two Ramsay hospitals supply around [REDACTED] orthopaedic treatments to private patients a year (or around [REDACTED]% of the Parties' combined total) and BMI Shirley Oaks supplies around [REDACTED] orthopaedic treatments to private patients per year (or around [REDACTED]% of the Parties' combined total). The volumes undertaken by these hospitals suggest

³⁵ It is located half-way between those hospitals and extends approximately from the conurbation of Reigate to the South to St Anthony's Hospital to the north, approximately around the area of Leatherhead to the west and south of Croydon to the east.

that each has a substantial presence. In the CMA's market testing, neither hospital raised concerns around being capacity constrained, which could limit the extent of competition for private patients.

105. In response to the CMA's market testing, BMI Shirley Oaks considered that it competed closely with [redacted] and to a more limited extent with [redacted]. The CMA has also considered a catchment area map submitted by BMI Shirley Oaks, which pointed to this hospital drawing the majority of its patients from [redacted] currently being considered, and to a lesser extent also from [redacted] area.
106. Ramsay, in response to the CMA's market testing, also submitted that it competed with [redacted] and [redacted]. Ramsay submitted that [a large number] of its patients travel within [10-20] miles of its facilities, which suggests that the two Ramsay facilities draw patients from the area [redacted].
107. Given the evidence outlined above, the CMA therefore considers that these hospitals are credible competitors to the parties in orthopaedics.
108. Further, the CMA notes that Epsom General Hospital the Northey Suite and East Surrey Hospital Brook Ward are PPUs in the local area which also offer orthopaedic treatments ([redacted] and [redacted] inpatients respectively in orthopaedics in 2013).
109. The CMA therefore considers that sufficient choice will remain post-Merger to constrain the Parties and prevent any deterioration in quality with respect to orthopaedic treatments for private patients or increase in prices for Self-pay patients.
110. The CMA therefore considers that the Merger will not give rise to the realistic prospect of an SLC in the provision of orthopaedic treatments.

General surgery

111. The Parties submitted that Spire Gatwick Park had [redacted] general surgery Self-pay inpatients and [redacted] general surgery private inpatients in total between 2009 and 2013 in the overlapping catchment area between the Parties³⁶ (representing around [0–10] of Spire Gatwick Park's total private general surgery inpatients over the period).
112. In general surgery the parties mostly overlap in the area [redacted]. As detailed above, the main competing hospitals in these areas are BMI Shirley Oaks and Ramsay with two hospitals (Ashted and North Downs).

³⁶ See footnote 35 above.

113. The Parties undertook around [X] inpatients treatments each in 2013 in general surgery. BMI Shirley Oaks undertook around [X] inpatient treatments in 2013 and Ramsay undertook around [X] inpatient treatments.
114. Moreover, for patients in the area of [X], Epsom General Hospital the Northey Suite and East Surrey Hospital Brook Ward will also offer general surgery treatments.
115. The CMA considers that these rivals in the local area will sufficiently constrain the merged entity from raising prices to Self-pay patients and/or from worsening the quality of their service offering to all patients.
116. The basis of the evidence available to it the CMA does not consider that the merger will result in a realistic prospect of an SLC with regard to general surgery.

Urology

117. The parties submitted that Spire Gatwick Park had [X] urology Self-pay inpatients and [X] urology private inpatients in total between 2009 and 2013 in the overlapping catchment area between the parties (representing less than [0–10%] of Spire Gatwick Park's total private urology inpatients over the period).
118. The main areas of overlap between the Parties are the [X]. For these patients BMI Shirley Oaks and Ramsay Ashted and North Downs represent competing alternatives.
119. BMI Shirley Oaks undertook around [X] inpatient treatments in 2013, and Ramsay around [X]. The CMA considers that this indicates that both of these hospitals have a considerable presence in urology in this area relative to the parties' volumes of treatments in urology.
120. The CMA considers that these rivals in the local area will sufficiently constrain the merged entity from raising prices to Self-pay patients and/or from worsening the quality of their service offering to all patients.
121. On the basis of the evidence available to it the CMA does not consider that the merger will result in a substantial lessening of competition in regard to urology.

Conclusion on the specialty assessment

122. The CMA considers that the significant majority of the parties' patients in the three specialties where the maps showed a more substantial overlap between

the parties would have at least three credible competing hospitals post-Merger. In addition, the CMA notes, that there are other hospitals on the edges of the Parties' catchment areas that might confer some additional constraint, although the precise extent of such constraint is unclear.

Day-case and outpatient facilities

123. As noted above, the CMA considers day-case patient and outpatient services to be in a separate frame of reference to inpatient services.
124. In the CMA Healthcare Market Investigation, it was found that there was scope for hospitals providing inpatient care to switch capacity into the provision of day-patient and outpatient service.³⁷ The CMA therefore considers that the constraints on the Parties' day-case and outpatient services are likely to be at least as strong as the constraints on the Parties' inpatient services.
125. As the CMA has not found a realistic prospect of a substantial lessening of competition for inpatient services, the CMA's conclusion extends to day-case and outpatient services.

PMI providers

126. The CMA has considered whether the Merger will impact on the combined entities' negotiations with PMI providers. Specifically, the CMA assessed whether negotiations with the combined entity which take place at a national level may be impacted by a reduction in local competition, and a corresponding increase in bargaining power.
127. Generally PMI providers were supportive of the Merger and did not consider that it would materially impact their commercial negotiations with Spire. Several PMI providers commented that there were sufficient alternative providers for all specialties in the area.
128. Some PMI providers provided examples of their use of countervailing buyer power in negotiations with Spire. They told the CMA how they have been able to remove some of the Parties' hospitals from the list of available hospitals to their insured customers. This has resulted in better terms in future negotiations.
129. In its assessment, the CMA has noted that PMI negotiations with Spire are conducted at a national level across a portfolio of hospitals, and that the

³⁷ CMA Private Healthcare Market Investigation, paragraph 5.52.

addition of one hospital to the portfolio was unlikely to impact national pricing given the availability of alternatives within the local area considered.

130. Given that the CMA does not consider there to be a realistic prospect of a SLC at the local level on a whole hospital or a specialty basis, the CMA does not consider that there is a realistic prospect of a SLC with respect to negotiations with PMI providers.

Conclusion on the local assessment

131. As detailed above, the CMA does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition on a whole hospital or a specialty basis for inpatient, day-case or outpatient services for patients or PMI providers.

Contracts with NHS Organisations

132. The Parties provide inpatient and outpatient services to NHS funded patients in two principal ways:

- (a) as an integral part of NHS provision (eg, as part of a Choose and Book programme or Any Willing Provider). Spire negotiates standard contract arrangements with local clinical commissioning groups under patient choice (including Choose and Book) on a hospital by hospital basis; and
- (b) in response to specific tender opportunities offered to local hospitals by a trust seeking supplementary capacity to meet local demand for a particular service or procedure. Spire submitted that for local contracts pricing is negotiated on a case by case basis, usually based on an NHS tariff, adjusted for a surcharge.

133. The CMA has considered whether the Merger may lead to a reduction in competition in choice for NHS funded patients, tender processes by NHS Organisations, or a reduction in choice for commissioners approaching providers on an *ad hoc* basis or 'spot purchase'), leading to higher prices and/or reduced quality.

134. In assessing whether the merger may result in a loss of competition for NHS funded treatments, we have considered:

- (a) the extent to which the Parties overlap
- (b) the extent to which the Parties have bid for the relevant services when they have come up for tender
- (c) evidence from commissioning entities

135. The Parties told the CMA that they do not hold comprehensive information about tenders or *ad hoc* approaches by NHS Organisations.
136. Based on the contract information before the CMA, the Parties have [X] NHS Organisation in common [X], in respect of [X]. The revenues derived from [X] constitutes [less than 5%] of all Spire Gatwick Park's NHS contract inpatient and daycase revenues, and [less than 5%] of Spire Gatwick Park's [X] revenues derived pursuant to NHS contracts.³⁸
137. As to the supply of services to individual NHS trusts hospitals in the relevant geographic areas, the CMA notes that pre-Merger, both Parties supplied different NHS trusts. These are located very close to the Parties' hospitals.
138. The CMA received no concerns from NHS Trusts or from the CCGs that the CMA contacted.
139. The CMA notes that the alternative facilities available for NHS contracts is likely to be wider than for privately funded services, since NHS hospitals also compete for this work. The CMA notes that East Surrey Hospital and Epsom Hospital are within Spire Gatwick Park's catchment area, and that St Helier's Hospital and Kingston Hospital are within St Anthony's catchment area. This is in addition to NHS funded treatment being offered at Ramsay Ashted and North Downs, Nuffield Haywards Heath and BMI Shirley Oaks.
140. The CMA therefore does not consider there to be a realistic prospect of an SLC for NHS funded contracts.

Third parties' views

141. The CMA contacted a large number of competing private and NHS hospitals, NHS Organisations, PMI providers and around 60 consultants practising at the Parties' hospitals. Some competitors and a small number of consultants raised some competition concerns. Other third parties did not express any competition concerns. All third parties' views are stated in this decision, when relevant.

Decision

142. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

³⁸ St. Anthony's has been unable to reconcile its 2013 NHS revenues for total inpatient and day-case back to its NHS contracts.

143. This Merger will therefore **not be referred** under section 22(1) of the Act.

Andrea Coscelli
Executive Director, Markets and Mergers
Competition and Markets Authority
24 September 2014

ⁱ END NOTE 1.- Paragraph 85 - McIndoe Surgical Centre has pointed out that it offers a limited number of specialties: ophthalmology, plastic surgery, outpatient minor operations and breast care.