Anticipated acquisition by Priory New Investments No 3 Limited of Affinity Healthcare Holdings Limited

ME/4410/10

The OFT's decision on reference under section 33(1) given on 11 March 2010. Full text of the decision published on 31 March 2010.

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

PARTIES

1. **Priory New Investments No.3 Limited** is a subsidiary company of **Priory Investments Holdings Limited** (Priory).[1] Through a number of subsidiary companies Priory owns around 50 healthcare facilities in the UK comprising hospitals, care homes and specialist care facilities. Priory offers mental healthcare services (acute psychiatry services, secure services and neuro-rehabilitation services), specialist education services and care home services. Priory offers its mental healthcare services to NHS patients, self-paying patients and to patients covered by private medical insurance.

2. **Affinity Healthcare Holdings Limited** (Affinity) offers mental healthcare services. It has two hospitals at Cheadle, Cheshire and Darlington, County Durham. It also has an adult eating disorders unit at Preston, Lancashire. Almost all of Affinity's revenue (99.6 per cent) comes from treating NHS patients.

[1] Priory is owned by ABN Amro (Royal Bank of Scotland plc), Coburg Business Corporation and Jolie Investments. However, the parties submitted that there is no overlap between these investors and Affinity and therefore the OFT has not investigated these business links any further.

TRANSACTION

3. On 14 January the parties announced that they had agreed that Priory (through Priory New Investments No.3 Limited) would acquire the entire issued share capital of Affinity.

JURISDICTION

4. As a result of this transaction Priory and Affinity will cease to be distinct. The parties overlap in the supply of independent adult eating disorders treatments in England and in the supply of independent adolescent psychiatric treatments in England.[2] Since the parties have a combined share of supply of more than 25 per cent in each of these services the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The Office of Fair Trading (OFT) therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

5. The OFT's administrative target date by which to reach a decision in this case is 11 March 2010.

MARKET DEFINITION

6. The parties overlap in the provision of the following services:

   - adult eating disorders treatments
   - generic adolescent psychiatric treatments, and
   - low secure treatments.

7. The overlap activities are predominately in the provision of these services for NHS patients although the parties also overlap in the provision of some services to self-paying patients to a small extent (discussed below). Further, patients may require in-patient hospital treatment, out-patient/day patient hospital care or community-based care. The parties largely overlap in the provision of in-patient hospital treatments.

8. For NHS patients, the process of being treated by an independent service provider (such as Priory or Affinity) generally starts with the patient's GP. The GP will, in general, refer the patient to a specialist consultant for further assessment who will decide what treatment path (for example, in-patient hospital treatment, out-patient/day patient hospital care or community-based care) is required. At this stage of the process the consultant contacts the relevant Primary Care Trust (PCT) for funding. The PCT will determine whether the patient can be treated by a local NHS provider or whether (for whatever reason) an independent provider is needed.[3] The parties submitted that there is a preference within the NHS for NHS patients to be treated by NHS providers and therefore the independent providers simply provide an 'overflow' service (that is, the additional demand that the local NHS providers themselves cannot meet) or for independent providers to fill gaps in NHS provision, particularly with regard to some specialist services like eating disorders treatments. The OFT's investigation corroborated this.

9. If it appears likely that the patient will need to be treated by an independent provider the local PCT or Specialised Commissioning Group (SCG)[4] will get involved since it is either of these organisations that approve the funding for independent provided treatments.[5] Therefore, when the treatment is funded by the NHS the independent providers' primary customer is the PCT or SCG. The PCT or SCG will agree with the independent provider the type and length of treatment and the price for the treatment.

10. However, not all treatment is purchased at the time of the treatment being required. The OFT's investigation has found that typically a PCT or SCG will acquire treatments using a mix of the following procurement methods:

    - Spot purchases (purchases made at the time of the treatment being required and may be for one patient only).

---

[2] 'Independent' in this sense means a non-NHS provider.
[3] Sometimes a NHS provider outside of the locality will provide the treatment. This is discussed further below.
[4] There are over 150 PCTs in England whereas only 10 SCGs.
[5] SCGs tend to commission specialist high cost treatments which are not economical for an individual PCT to commission. By their nature such treatments do not affect a large number of people.

- Block contracts (purchases made in advance of the treatment being required. The contracts will specify the level of the treatments required including the number of hospital beds set aside for NHS patients and the price for the treatment. These contracts will be put out to tender).

- Framework agreements (these contracts will stipulate the price but not the number of patients to be treated. Therefore, with these contracts the PCT or SCG run the risk of hospital beds not being available at the time of the patient requiring treatment although a range of providers will be signed up to the framework).

Product scope

11. The OFT has examined possible product market definitions with respect to adult eating disorders treatments, adolescent psychiatric treatments and low secure treatments. Given that PCTs and/or SCGs want appropriate treatments being delivered to all of their patients there is no demand side substitution between these treatments categories. However, it may be the case that the product markets in this case are narrower in scope than the three broad categories listed above. For example, the treatments may be delineated according to whether the treatment is offered as an in-patient or out-patient treatment.

12. The parties submitted that the appropriate product market definition in this case is the provision of mental health services by the NHS and independent providers on a community care and in-patient basis (although the parties did, as a sensitivity check, analyse the proposed transaction according to the three overlap treatment categories on an in-patient basis only).

13. PCTs and SCGs told the OFT in this case that the differences between in-patient hospital treatment, out-patient/day patient hospital care and community-based care are such that they determine their purchasing decisions. For example, in-patient treatments may be significantly more expensive than other types of treatments and therefore are used only when necessary. Indeed some third parties told the OFT that community-based care may deliver the same effectiveness of treatment as other treatment types but with the added advantage to the patient of remaining in their community. However, the OFT was also advised that for some patients,

particularly those with acute conditions, in-patient care was the only appropriate treatment type and that a small (five to 10 per cent) increase in price would not result in these patients being treated on an out-patient basis.

14. Moreover, with respect to adult eating disorders treatments third party comment from customers in the North West of England (where the OFT's investigation focused) indicated that from the demand-side customers do not look to choose between provision on the block contract and provision on the spot market. Rather, the evidence indicates that customers utilise the block contract provision until there is no more capacity on the block contract at which point they seek provision on the spot market. Therefore, the OFT has cautiously examined block contract supply separately from spot market supply. The OFT has not found it necessary to conclude on supply within a framework agreement in this case.

15. In light of third party comment the OFT has decided to examine this case on the basis of adult eating disorders treatments (for block contracts and spot market provision separately), adolescent psychiatric treatments and low secure treatments further segmented by in-patient treatment, out-patient treatment and community-based care. The OFT notes that in this case, however, a strict definition of the product market is not required since it does not affect the outcome of the competition assessment.

Geographic scope

16. In some previous hospital and healthcare cases the OFT has used a 30 minute drive time as the basis for the geographic territory of its analysis.[6] In this regard the parties noted that these cases dealt with private elective treatments in private hospitals and therefore queried their relevance to the current case.

17. OFT market enquiries in this case have strongly indicated that the appropriate geographic scopes for all three broad treatment types are wider than a 30 minute drive time, especially when treatment is delivered on an in-patient basis. Customers (PCTs and SCGs) have told the OFT that it is

[6] For example, Completed acquisition by Spire Healthcare Limited of Classic Hospitals Group Limited, case ME/3610/08, OFT decision of 18 June 2008; and Completed acquisition by General Healthcare Group of assets of Nuffield Hospitals, case ME/3468/08, OFT decision of 1 May 2008.

their preference for patients to be treated as locally (or regionally) as possible in order for the patient to maintain ties with their community and social networks throughout the period of their treatment. This is especially true for in-patient treatments for eating disorders and adolescent psychiatric treatments.

18. For **adult eating disorders treatments**, the OFT has heard from some customers that they will procure treatments from outside their region of the country although in the main they prefer treatments to be conducted within their own regions where possible.

19. In the North West of England where much of the OFT's investigation focused a regional block contract is in place for the provision of adult in-patient eating disorder treatments for NHS patients (see paragraphs 24 to 27). Those North West NHS patients treated outside of the block contract (that is, on the spot market; see paragraph 25) are generally treated within the North West. The OFT has not seen any evidence to suggest that any provision provided outside of the North West is on a scale material enough to affect the spot market price. The OFT therefore considers that the market for the provision of adult in-patient eating disorder treatments for NHS patients is regional, whether the treatment is delivered via the block contract or via the spot market.

20. One competitor told the OFT that competition for **adolescent psychiatric treatments** takes place on a national basis. However, some customers have said that these treatments are procured regionally while other customers have told the OFT that they procure the treatments locally.

21. As with the case for adult eating disorder treatments the evidence in this case indicates that PCTs and SCGs mostly refer NHS patients for adolescent psychiatric treatments to providers within their region. However, even this may depend on whether the patient needs generic

treatment (where fewer providers may exist).[7] As a starting point to the analysis the OFT has decided to examine this case on a regional basis.

22. Customers generally said that **low secure treatments** are wider in geographic scope than are adolescent psychiatric treatments or adult eating disorders treatments. One customer said that it was quite common for it to procure these treatments outside of its own region. However, the OFT's investigation found that most customers contract these treatments on a regional basis.

HORIZONTAL ISSUES

Adult eating disorders treatments

23. The parties overlap on a regional basis in the North West in the supply of adult eating disorder treatments. They overlap in the supply of these treatments on the spot market and in competition for the North West block contract.

The North West block contract

24. In the North West, the main procurer of adult eating disorder treatments supplied by independent providers for NHS patients is the North West Specialised Commissioning Group (NWSCG). This body has delegated responsibility for commissioning specialised care (including adult eating disorders treatments) on behalf of the North West's 24 PCTs.

25. In 2008 the NWSCG decided to move the procurement of adult in-patient eating disorders treatments toward pre-paid block contracts (and away from the more expensive spot market purchasing).[8] It therefore put to tender a block contract for the provision of these services for five years to 2013 (with a break clause after three years, 2011). Affinity won the block contract (hereafter 'the block contract') which determines that Affinity must make available 24 beds for NHS patients (falling to 18 beds in year

[7] 'Generic' and 'specialist' treatments are commonly used terms within the industry. The OFT understands that generic treatments are used on patients whose conditions are not complex, severe or recurring.
[8] Affinity internal documents state that the proportion of Affinity's income derived from contracts (as opposed to spot purchasing) increased from two per cent in 2007 to 21 per cent in 2009.

three). Both the parties and the NWSCG told the OFT that the reason why the number of beds to be made available falls over the duration of the block contract is because the NWSCG expects increased community-based provision of these services over the period. Corroborating this, an Affinity internal document says that a future trend within the industry is likely to be more community and out-patient care which would reduce the amount of in-patient care needed.

26. Within the block contract each PCT is awarded an allowance of bed nights per year which reflects on a pro rata basis (over three years) that PCT's contribution to the funding. By way of example, an allowance for two bed nights equates to over 700 bed nights over the course of the year. If a PCT over utilises its allowance over the course of a year it can lead to that PCT incurring additional costs. However, OFT third party inquiries revealed that this does not impact the choice of provider.

27. Another important feature of the block contract is that is allows for NHS patients to be referred to Affinity's Cheadle Royal hospital even if the contracted for number of beds are full (in circumstances where there are additional beds available). The OFT was told by NWSCG that each patient that the NWSCG or the North West PCTs refer to Affinity in addition to referrals made within the block contract becomes more cost effective down to a floor of [ ] of the prevailing spot price.[9] Therefore, the referring bodies in the North West have a strong incentive to refer patients to Affinity at the exclusion of other possible providers up to the point where Affinity cannot take additional patients.

Evidence and analysis

28. The OFT's investigation concentrated on two areas of competition: (i) the provision of adult in-patient eating disorders treatments for NHS patients outside of the block contract (that is, on the spot market), and (ii) likely competition for the block contract when it next comes to tender.

29. In total, the parties estimated that adult in-patient eating disorders treatments for NHS patients were worth around £9–10 million in the North West. The NWSCG estimated that around two-thirds of referrals were placed within the block contract (including placements over and above the

[9] Except for the first 'overflow' patient who is treated at the same cost as the block contract.

contracted for beds in Affinity as discussed in paragraph 25 above) and one-third on the spot market. This is corroborated by Affinity's internal documents which indicate that typically it would be treating [ ] patients on the block contract and a further [ ] patients in addition to what it set aside for the block contract.[10]

Competition in the spot market

30. In terms of the functioning of the spot market in the North West the typical referral route is as follows.

- A PCT identifies a possible candidate for eating disorders inpatient care for whom community options are no longer appropriate.
- The patient is assessed by Affinity (Cheadle Royal) or another gatekeeper organisation.
- If the patient is judged to need in-patient care, and Affinity have capacity on the block contract, they are admitted into Cheadle Royal for treatment.
- If the contracted allowance with Affinity is full then, in the first instance, the NWSCG will typically utilise any additional capacity Affinity may have at that time ([ ] contractually agreed price).
- If Affinity has no extra capacity, but the patient is non-urgent, the patient may wait for a bed.
- If the patient cannot wait, then the NWSCG will inform the PCT, who will have to find another place for the patient (though NWSCG may help them with this). The placement will typically be at one of the other local in-patient providers: Cheshire and Wirral NHS Foundation Trust (Cheshire and Wirral) or Priory, to which the PCT will pay a spot price.

31. On the information submitted by the parties and third parties, the OFT estimates that the shares of beds available for spot market purchases for

[10] Affinity itself received around £[ ] in 2009 from the block contract and approximately a further £[ ] from treating additional patients.

adult in-patient eating disorders treatments for NHS patients are [70–80] per cent for the parties (increment of [30–40] per cent) and the remainder ([20–30] per cent) for the Cheshire and Wirral.

32. However, these figures should be treated with some caution. Indeed, given that Affinity is the preferred provider of treatments once beds on the block contract are unavailable, it is arguable that there is less direct competition between the merger parties in the spot market than the above figures indicate. More specifically, the above figures include Affinity beds which are used for treatments in addition to Affinity's obligations within the block contract (but are priced at a level agreed in the block contract). Therefore, Affinity's true spot market share (for those patients for which it directly competes with Priory and Cheshire and Wirral) will be significantly less than that quoted above.

33. Third party customers in the area agreed with this assessment. Indeed, the block contract provides such a strong incentive to use Affinity, even when the block contract provision is fully utilised that several customers told the OFT that they now always use Affinity despite instances where they used to always use Priory or where the customer has negotiated a cheaper spot price with a competitor.

34. Only one customer (a PCT) was concerned about the merger with respect to competition in the North West. The customer was initially concerned that the proposed merger would significantly reduce choice in its local area perhaps leading to higher prices. However, the customer explained to the OFT that it uses Affinity exclusively up to the point where Affinity does not have an additional capacity (and therefore benefits from the provisions in the block contract) and then it would use Priory. Therefore, the customer did not experience direct head-to-head competition between the parties before the merger.

35. [ ] Priory has been its main independent competitor in the provision of independent adult eating disorders treatments in the North West. Be that as it may, the OFT's investigation shows that currently Affinity is likely to be a weak constraint on Priory for 'overflow' patients because of the way the block contract structures such referrals (that is, customers will typically only turn to the spot market when Affinity is no longer able to take on

additional patients). As such, the merger will not remove a substantial constraint on Priory in this regard.

36. [ ] NHS Foundation Trusts as being likely key competitors in the future. Likewise, some third party customers told the OFT that they expect to see some Foundation Trusts being active at some future point since they are incentivised through their funding arrangements to grow their businesses (by selling to PCTs).

37. However, [ ] a shift 'in the balance of power' away from the independent providers toward the NHS purchasers. According to the internal documents, one of the main drivers of this shift has been the North West regional block contract.[11] This suggests that there is some countervailing buyer power, at least to the extent that the NHS purchasers can determine the size and scope of the block contract (which affects the spot market) and the design of the tendering process which may affect the intensity of competition for the block contract(s). Indeed, one internal document says that the NWSCG is 'shaping the care pathway leading to the requirement for more than one party's services'. A move toward more community-based care would free up additional spare capacity in the spot market. Various Affinity internal documents ascribe Affinity's decline in profit margin to the North West block contract.

Competition for the block contract

38. The NWSCG was not concerned about the merger substantially lessening choice for the block contract when it comes up from renewal (2011–2013).

39. When the NWSCG put the block contract out for tender in 2008 it received [ ] bids, [ ] of which were shortlisted [ ]. The NWSCG told the OFT that [ ].

40. [ ] the NWSCG told the OFT that [ ].

[11] Indeed, the parties submitted that they expect NHS commissioning of mental health treatment services via block contracts (or similar procurement arrangements) has been the recent trend within the NHS. This has been confirmed by some customers.

Barriers to entry and expansion

41. The OFT examined the likelihood of new providers entering or expanding by the time the new block contract comes up for tender. The OFT assesses entry and expansion according to three criteria: whether it will be (i) likely, (ii) timely, and (iii) sufficient.

Likelihood of entry and expansion

42. Based on the OFT's investigation, and in particular questioning the NWSCG, the OFT considers that bidders for the next block contract who were not in a position to be shortlisted in the last tender round are more likely to be an existing supplier who has expanded, or an existing provider in a neighbouring region who can serve at least some of the North West than an new entrant starting from scratch. This is because such an entrant would need the necessary clinical expertise which the OFT's investigation has revealed to be the biggest inhibitor of entry. However, one PCT told the OFT that it is confident that it possesses the ability to sponsor entry (discussed below).

43. Further, OFT questioning of third parties has shown that customers consider that entry into in-patient treatments is more likely to come from providers currently offering out-patient treatments. The OFT has found one example of a PCT in the North East who has built up expertise for adult in-patient eating disorders treatments via this route and considers itself in a position to bid for future work.

44. Based on customer comments the OFT was able to approach four organisations, three of which were identified as being potential entrants in the North West and the fourth was identified as being a potential sponsor of entry. Two said that they did not have any plans to offer in-patient treatments. A further said that it did not currently compete on the spot market but nevertheless it has considered entering. This potential entrant told the OFT that if it were to enter its preference would be to do so with the security of a contract for at least some of the beds. However, the potential entrant did say that by the time the block contract comes up for renewal it is likely that it would have specialist clinical staff and the necessary regulatory approvals in place.

45. The fourth organisation (a PCT) told the OFT that it was very confident of its ability to sponsor entry of around six beds although it did not identify which provider it expected to be the most likely entrant.

Timeliness of entry and expansion

46. The OFT's investigation has found that some key customers in the North West are confident that entry and/or expansion can occur in a timely and sufficient manner to safeguard them against post merger price rises (or decline in the quality of service). Indeed, the Cheshire and Wirral expanded its adult eating disorders treatment capacity from six to 10 beds within the OFT's preferred time frame of one to two years.[12] Affinity itself also opened an eight bed eating disorders treatments unit in Preston within a similar timeframe. The main regulatory requirement is Care Quality Commission (CQC) registration which some third parties told the OFT could be obtained in a matter of months. The CQC told the OFT that changes will be made to its approval process on 1 April 2010 but this should not materially prolong the time in which approval can be given.

47. Besides Cheshire and Wirral the OFT has identified a further potential entrant (mentioned in paragraph 44) who, on the basis of the information submitted to it, the OFT considers could enter in time to bid for the next block contract.[13]

Sufficiency of entry and expansion

48. If it is the case that [ ] it is likely that entry and expansion would be sufficient to defeat the merged entity from exploiting any reduction in competition resulting from the merger. Cheshire and Wirral currently has 10 beds, one PCT is confident that it can sponsor entry to the extent of six beds and a further potential entrant said that it expects to have the clinical

[12] By way of comparison one NHS Trust located in the North East said that it plans to begin supplying adult eating disorders treatments (from a starting position of supplying out-patient treatments only) within six to eight months.

[13] Besides amending future block contracts by splitting the requirements between providers (paragraph 40), the OFT considers that there are also other ways in which the next block contract tender process could differ from the last one which could aid the timeliness of entry. For example, the NWSCG could embed in the process a time lag between the award of the block contract and it taking effect to give the winning bidder sufficient time to get staff and beds in place.

staff and regulatory approvals in place by the time the next block contract comes up for tender.

49. On balance the OFT considers that entry and/or expansion would be timely, likely and sufficient to pre-merger levels of competition for a future block contract.

Adolescent psychiatric treatments

50. In the North West of England Affinity provides generic adolescent psychiatric treatments for NHS patients at Cheadle Royal while Priory provides adolescent eating disorders treatments for NHS patients. Because of the distinction in treatments offered the parties submitted that they do not overlap on a regional basis (there are no overlaps in any other UK region). Nevertheless, the OFT examined the provision of adolescent treatments in the North West because some third parties told the OFT that they thought that the parties had competed directly against each other in the past for adolescent treatments.

51. Eating disorders treatments for adolescents are not included in the NWSCG block contract apart from those for 16- and 17-year olds. However, from 1 April 2010 no adolescents will be allowed to be placed on the same ward as adults. Therefore, the OFT understands that any current overlap between the parties in the provision of specialist eating disorders treatments for adolescents will be removed in April this year.

52. Further, third parties submitted that because of the specialist nature of eating disorders treatments it is unlikely that an adolescent in need of acute eating disorders treatment would be referred to a provider of generic adolescent treatments. In the North West it is Priory who can offer these specialist treatments.

53. However, some customers said that they thought the Priory could provide generic adolescent treatments if required. However, the OFT did not identify any PCT customers who used the Priory for this purpose in the past two or three years.

54. Some third parties told the OFT that non-acute eating disorders treatments for adolescents could potentially be treated by generic adolescent

treatment providers. However, the OFT's investigation showed that other competitors remain in the region. Competitors in the North West for adolescent eating disorders generic treatments include Cheshire and Wirral. For generic adolescent treatments they include Pennine NHS Trust, Greater Manchester West NHS and Central Manchester Foundation Trust (Manchester Children's Hospital).

Barriers to entry and expansion

55. The parties estimate that NHS provision of adolescent treatments has increased from around 70 beds to around 100 beds since the middle of the decade. In particular, they told us that entry or expansion has occurred by Cheshire and Wirral, Pennine NHS Trust and Five Boroughs Partnership (Five Boroughs). Five Boroughs told the OFT that it has opened an eight bed Tier 4 Children and Young People's unit this year which took it around [ ] to achieve. Around half of the beds are currently under contract while the other half are available for spot market purchases.

Education services to adolescents

56. The parties do provide education services to adolescents (under 16 year olds). Affinity estimated that around half of its education services were delivered to customers outside of the North West (in Yorkshire and the West Midlands). In total Affinity received around £[ ] for adolescent education services in 2009 (and therefore around £[ ] outside of the North West).

57. The Priory does not account for adolescent educational services separately (although its Annual Report says that it received around £74 million for educational services generally throughout the UK in 2008). However, given the small amount of revenues that Affinity generates from education services and the lack of third party concerns, the OFT has not examined generic adolescent psychiatric treatments or adolescent education services any further.

Conclusion on adolescent treatments

58. In the main, the parties do not overlap in the provision of adolescent treatments in the North West. Any overlap in eating disorders treatments to

16- and 17-year olds will cease in April this year. For younger adolescent the evidence indicates that the parties are not strong competitors in the provision of treatments in the North West.

59. Moreover, even if the parties did compete to some extent there will remain sufficient competition in the region to constrain the parties after the merger.

Low secure treatments

60. The merger parties do not overlap on a regional basis for the provision of low secure treatments.[14] However, some customers within the North West region listed both as potential suppliers, perhaps reflecting that, for some customers at least, low secure treatments can be sourced from a wide geographic area (that is, wider than regional).

61. The OFT's investigation has nevertheless identified a number of third party competitors in the North West and North East (where Affinity is located) including the Pennine NHS Trust, Partnership in Care, Middlesbrough PCT and Mersey Care. Affinity's internal documents provide some corroboration that there exists sufficient competition for this service in the North of England.

Out-patient treatments

62. In terms of out-patient treatments, Affinity provides only a relatively small amount of treatments to self-paying patients (it does not provide treatments on an out-patient basis to NHS patients). Last year Affinity earned around £[ ] from the provision of cognitive behavioural therapy sessions on an out-patient basis at Cheadle. Affinity does not actively market these services. In comparison, Priory earned around £[ ] million from out-patient treatments for self-paying patients last year in the North West. Given the small overlap in these services and the lack of third party concern the OFT has not examined out-patient treatments any further.

[14] Laing & Buisson ('Mental Health and Specialist Care Services: UK market report 2008/09', third edition) defines low secure as a description of the environment for those patients who need to be compulsorily detained. These environments are less resource-intensive and require a lower level of physical security than a medium or high secure environment while meeting suggested security standards set out by the Department of Health for Psychiatric Intensive Care Units.

THIRD PARTY VIEWS

63. Third party views have been incorporated in the discussion of each of the treatment areas above.

64. During its investigation the OFT approached a number of competitors and around 20 customers. Almost all these customers were unconcerned about the proposed merger, either because they consider sufficient competition will exist after the merger or because they believe that they have the ability to sponsor entry and/or protect themselves through a tendered for contract. The customer concerns that were raised have been discussed above.

ASSESSMENT

65. The parties overlap in the provision of adult eating disorders in-patient treatments for NHS patients, adolescent psychiatric in-patient treatments for NHS patients, low secure in-patient treatments for NHS patients and a small amount of treatments on an out-patient basis and for self-paying patients.

66. The merger does not raise competition concerns with respect to low secure in-patient treatments or to out-patient treatments.

Adult eating disorders treatments

67. The parties overlap in the provision of adult eating disorders in-patient treatments for NHS patients in the North West. In this region the NWSCG has in place a region-wide block contract for the provision of these services. Affinity was awarded this block contract in 2008. Treatments are therefore either provided by Affinity as a part of its obligations under the block contract, provided by Affinity in addition to its obligations under the block contract (but nevertheless is priced according to an agreement set out in the block contract) or provided on the spot market.

68. Since the block contract makes it beneficial for the North West PCTs to use Affinity even beyond the point that Affinity has met its block contract obligations Affinity is only a weak constraint on Priory in the spot market (since customers overwhelmingly use Affinity up to the point where

Affinity can not treat any more patients on referral). The merger will therefore not alter the intensity of competition that already exists between the two main spot market providers for NHS 'overflow' patients in the North West; Priory and Cheshire and Wirral.

69. In terms of competition for the block contract when it comes up for renewal (in 2011 at the earliest and 2013 at the latest), based on previous bidding experience the merger reduces the number of credible bidders from [ ] to [ ].

70. However, the OFT accepts that, [ ] which the OFT believes might help stimulate competition for future block contracts. The NWSCG told the OFT that [ ]. The OFT considers that in this way the number of eligible bidders could be increased.

71. Some third parties in the area were confident of new providers being able to provide adult eating disorders in-patient treatments for NHS patients in the next two or three years. In its investigation the OFT was able to identify several examples of either entry or expansion in the provision of these treatments (albeit some were located outside of the North West). In conjunction with [ ] the OFT considers that the identified entry or expansion of these treatments in the North West would be timely, likely and sufficient to prevent the merged entity exploiting a loss of competition resulting from the merger.

Adolescent psychiatric treatments

72. The OFT examined the provision of adolescent psychiatric treatments to NHS patients in the North West.

73. Based on the evidence the parties do not in main compete directly in any area of these treatments. Any current overlap will be removed in April this year following regulatory changes. Further, the OFT has identified sufficient remaining competition to constrain the merged entity from raising prices or lowering quality of service.

74. Consequently, the OFT 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.

DECISION

75. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.