# Anticipated acquisition by AXA PPP healthcare Limited of the private medical insurance business of Simplyhealth Limited

**ME/6531/15**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 21 July 2015. Full text of the decision published on 3 August 2015.

**Please note that [✂] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.**

## SUMMARY

1. AXA PPP healthcare Limited (**AXA**) has agreed to acquire the underwritten private medical insurance and self-funded corporate plan administration business (PMI business) and certain assets of Simplyhealth Group Limited (the **Simplyhealth PMI business**) (the **Merger**). AXA and the Simplyhealth PMI business are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) considers that the Parties will cease to be distinct as a result of the Merger, that the turnover test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

3. The Parties overlap in the supply of underwritten private medical insurance and self-funded third party administered (**TPA**) corporate plans (referred to in this decision as **PMI**) in the United Kingdom (**UK**). The CMA has assessed whether the Merger will result in a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects against the candidate frame of reference of the supply of PMI on a UK-wide basis.

4. On the basis of a frame of reference for the supply of PMI in the UK, the Parties have a combined market share of approximately [25–35]% and the Merger only results in a small increment of [0–5]%, leaving the structure of the market broadly unchanged.

5. The evidence available to the CMA indicates relatively limited competitive interaction between the Parties pre-Merger, with AXA and Simplyhealth offering different service propositions. While AXA's revenues are derived mainly from private individuals and large corporates (including self-funded TPA corporates), the Simplyhealth PMI business derives the majority of its revenue from the small and medium-sized enterprises (SME) customer segment. The CMA finds that, although customers view AXA and Simplyhealth as competitors, Bupa, Aviva and VitalityHealth were consistently identified by customers and brokers as significant competitors to AXA. Smaller insurers such as Cigna and WPA were also often identified as strong competitors in certain customer segments (eg for large corporates and self-funded TPA corporates).

6. Overall, the CMA does not consider AXA and the Simplyhealth PMI business to be close competitors. The CMA believes that the increment in AXA's share of supply as a result of the Merger is small and AXA will remain constrained by other PMI providers post-Merger, including by Bupa which remains the largest PMI provider on the market (with market share of [30–40]%).

7. The CMA considers that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of an SLC in a market in the UK as a result of horizontal unilateral effects.

8. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## ASSESSMENT

## Parties

9. **AXA** is a subsidiary of AXA UK plc (AXA UK) and comprises all of AXA UK's PMI activities. AXA UK (and its subsidiaries) specialises in healthcare as well as wealth management and general insurance and is part of the group of businesses (the AXA Group) controlled by AXA S.A., a France-based global insurance provider. The AXA Group is a global leader in financial services and operates in 56 countries. The turnover of the AXA Group in 2014 was approximately £74.2 billion worldwide, of which approximately £[✂] was generated in the UK.

10. Simplyhealth Limited (**Simplyhealth**) is the UK-based parent company of Simplyhealth Group Limited. Simplyhealth primarily operates in the health cash plan sector but also offers dental insurance and PMI. Simplyhealth comprises three principal companies: Simplyhealth Access (which operates within the financial services sector), Simplyhealth Wellbeing Limited (which

contains the retail trading division) and Denplan Limited (which caters to the dental profession and its patients). The target is the Simplyhealth PMI business which currently operates as a trading division within Simplyhealth Access and is not a distinct legal entity (although it does include Simplyhealth Administration Services Limited which is a legal entity). Simplyhealth's total turnover in 2013 was £[✄] and the turnover of the Simplyhealth PMI business in 2014 was around £[✄] in the UK.

## Transaction

11. On 24 April 2015, AXA entered into a business and share transfer agreement to acquire the Simplyhealth PMI business, together with the assets required to operate it, subject to clearance by the CMA.

## Jurisdiction

12. The transaction will include:

*(a)* the rights to renew Simplyhealth's existing PMI policies onto AXA's products, processes and systems on their renewal date;

*(b)* the entire issued share capital of Simplyhealth Administration Services Limited;

*(c)* a real estate property, certain fixed and moveable assets, office equipment, IT systems and goodwill; and

*(d)* Simplyhealth employees employed in connection with the Simplyhealth PMI business who will transfer to AXA pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006.

13. The CMA considers these assets and businesses together to constitute an enterprise within the meaning of section 129 of the Act.[1] As a result of the Merger, the enterprises of AXA and the Simplyhealth PMI business will cease to be distinct. Section 23(1)(a) of the Act is thereby satisfied.

14. The UK turnover of the Simplyhealth PMI business exceeds £70 million, therefore the turnover test in section 23(1)(b) of the Act is satisfied.

15. The CMA 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.

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[1] See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), paragraph 4.8.

16. The initial period for consideration of the Merger under section 34ZA(3) of the Act commenced on 5 June 2015 and the statutory 40-working-day deadline for a decision is therefore 30 July 2015.

## Counterfactual

17. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions as between the merging parties.[2]

18. In this case, the CMA has found no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual.

## Frame of reference

19. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.[3]

20. The Parties overlap in the supply of PMI in the UK. PMI is a form of non-life insurance which provides indemnity cover against the costs of medical treatment (for acute medical/surgical conditions) in private hospitals or clinics.

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[2] *Merger Assessment Guidelines* (OFT1254/CC2) (2010), from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2) (2014), Annex D).

[3] *Merger Assessment Guidelines*, paragraph 5.2.2.

### *Product scope*

21. The Parties submitted that the relevant product market is the market for the supply of PMI.

22. In Bupa/CHG,[4] the Competition Commission (CC) considered the PMI market to:[5]

    *(a)* include personal and corporate PMI policies;

    *(b)* include TPA services,[6] as the service largely mirrors the functionality of a PMI policy; and

    *(c)* exclude cash plans, dental benefit plans (and certain other forms of partial insurance cover, namely critical illness cover and income protection insurance), as they are essentially complements to PMI.[7] The CMA does not consider these further as they are excluded from the Merger and therefore the Parties do not overlap in these markets.

23. The Parties submitted that they sell PMI directly and through intermediaries to a range of customers, generally categorised into:

    *(a)* Private individuals: buying PMI cover for themselves and family members.

    *(b)* Corporates: buying PMI cover for their employees, split into:

        (i) SME, whose policies tend to be similar to those for private individuals, albeit with greater flexibility; and

        (ii) larger corporates, where these are bulk schemes covering hundreds or, in some cases, thousands of employees and the policies are typically adapted to meet a company's specific requirements.

    *(c)* Self-funded TPA corporates: These are designed for companies with 500 employees or more and give the company greater financial control and flexibility over employee benefits and claims management. For instance, a

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[4] CC, investigation of the acquisition of CHG by BUPA, paragraphs 4.55–4.60.
[5] In BUPA/Clinovia (ME/2936/07), the Office of Fair Trading did not find any evidence to suggest that a departure from the market definition proposed by the CC in Bupa/CHG was necessary (see paragraph 10).
[6] TPA service providers carry out many of the same functions as PMI providers (eg writing policies, hospital/consultant procurement, payment for treatment received, etc) but they do not underwrite or bear any risk themselves. The customer tends to self-insure part or all of their risk. These services tend to be bespoke and vary on a customer by customer basis.
[7] In the CMA's private healthcare market investigation (April 2014), the CMA also considered PMI to be different from health cash plans as '[cash plans] are intended to help cover the cost of everyday healthcare such as visits to the optician or the dentist rather than, as in the case of PMI, the whole cost of hospital treatment.'

company could self-insure a large part, or all of its risk, and require a supplier to provide it with claims management and TPA services.

24. The CMA has therefore considered whether it would be appropriate to segment the product market by customer group.

*Segmentation by customer group*

25. In identifying the relevant product market, the CMA may take account of supply-side factors, including the responses of suppliers to changes in price. This may be the case when: (i) firms have the ability and incentive to quickly shift capacity in the supply of a range of different products that are not demand-side substitutes, depending on demand for each; and (ii) the same firms compete to supply these different products and the conditions of competition are the same for each product.[8]

26. The Parties submitted that, due to a high degree of supply-side substitutability, PMI provided to private individuals, SME, large corporate customers and self-funded corporates should be considered as a single market. The Parties provided evidence to show that the core skills required in customer services apply across all customer groups and staff training occurs such that staff can serve multiple customer groups. Simplyhealth already runs an IT system that does not differentiate between customer groups and AXA has plans to integrate all customer groups into a single IT system. In addition, support functions (eg marketing) tend to serve all customer groups.

27. Competitors responding to the CMA's questionnaire provided evidence suggesting that supply-side substitution between customer groups was possible and did occur. For example, many competitors run a single IT system for all customer groups and/or train staff to serve all customer groups.

28. The Parties and competitors stated that they regularly reallocate staff and resources between customer segments, although not necessarily in response to a price increase. Competitors stated that the time and costs of reallocating resources were not prohibitive and/or were absorbed as part of normal business activity.

29. The CMA notes that most competitors provide services to all customer groups and that the same competitor set broadly exists across all segments, even if the actual customer groups focused on by individual businesses differed.

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[8] *Merger Assessment Guidelines*, paragraphs 5.2.17–5.2.19.

30. In Bupa/CHG, the CC concluded that personal and corporate PMI policies form part of the same market due to a high degree of substitutability on the supply side.

31. Based on the evidence before the CMA in this case, the CMA considers that supply-side substitutability exists with broadly the same competitor set and competitive conditions across customer groups. For these reasons, the CMA does not consider it appropriate to segment the product market by customer group and has therefore considered the impact of the Merger in relation to the supply of PMI.

### *Geographic scope*

32. The Parties submitted that the market for PMI is national in scope, citing the CC's findings in Bupa/CHG that PMI policies are sold nationally, have standard national tariffs and that there is little inter-country trade in PMI policies.[9]

33. All of the six competitors that responded to the CMA's questionnaire stated that they sell PMI policies across the UK, and provide coverage (to a greater or lesser degree) across the UK.

34. The CMA did not find any evidence to suggest that a departure from the geographic frame of reference in previous cases was necessary. The CMA has therefore considered the impact of the Merger in the UK.

### *Conclusion on frame of reference*

35. For the reasons set out above, the CMA has considered the impact of the Merger in relation to the supply of PMI in the UK.

## Competitive assessment

### *Horizontal unilateral effects*

36. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.[10] Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or

[9] Competition Commission (CC) investigation of the acquisition of CHG by Bupa. Paragraph 4.62.
[10] *Merger Assessment Guidelines*, from paragraph 5.4.1.

may be expected to result, in an SLC in relation to unilateral horizontal effects in the supply of PMI in the UK.

*Shares of supply*

37. The Parties provided the CMA with market share information for the UK PMI market based on published market reports.

38. The CMA collected information from third parties on their share of supply of PMI, including revenues from self-funded TPA corporate plans, in the UK. These are shown in Table 1 below. The CMA notes that these estimates are subject to a degree of uncertainty and will overestimate market shares to some extent as the relevant information was not received from all PMI providers in the UK.

**Table 1: Market shares for the supply of PMI in the UK, 2013**

| **Provider** | **Revenue £m** | **Market share %** |
|---|---|---|
| AXA | [✂] | [25–35] |
| Simplyhealth | [✂] | [0–5] |
| **Combined** | [✂] | [25–35] |
| Bupa | [✂] | [30–40] |
| Aviva | [✂] | [10–20] |
| VitalityHealth | [✂] | [5–15] |
| WPA | [✂] | [0–10] |
| CIGNA | [✂] | [0–10] |
| Exeter Friendly | [✂] | [0–10] |
| Total | [✂] | |

Source: CMA's estimates based on data submitted by the Parties and third parties.

39. Table 1 shows that the Parties are the second and fifth largest suppliers of PMI by revenue in the UK. Post-Merger, AXA would remain the second largest supplier of PMI with [25–35]% share of supply, with an increment of only [0–5]%.

40. The CMA notes that Bupa would remain the largest PMI supplier with a share of [30–40%] and that the top four providers would account for 94% of PMI supply in the UK.

*Closeness of competition*

41. Where products are differentiated, for example by branding or quality, unilateral effects are more likely where the merger firms' products compete

closely.[11] In addition to considering market shares, the CMA therefore considered, to the extent that products may be differentiated, whether the Parties compete closely with each other (and therefore whether the share of supply estimates might understate the degree of competition being lost as a result of the Merger).

42. In assessing the closeness of competition between the Parties, the CMA has considered a range of evidence including: (a) the Parties' customer bases; (b) internal documents relating to analysis of rivals, brand positioning and consumer perceptions; (c) switching data; and (d) third party views.

*Parties' customer base*

43. The Parties provided information on the revenue obtained from different customer segments. This is shown in Table 2 below. The CMA notes that the Parties each gain the majority of their revenues from different customer segments with Simplyhealth being more focused on SME and AXA being more focused on private individuals and large corporates (including TPA corporates).

**Table 2: Parties' sources of revenue**

| | **AXA** | | **Simplyhealth** | |
|---|---|---|---|---|
| | % of revenue (includes legacy products) | % sold through intermediaries | % of revenue | % sold through intermediaries |
| Private individuals | [✂] | [✂] | [✂] | [✂] |
| SME | [✂] | [✂] | [✂] | [✂] |
| Large corporates | [✂] | [✂] | [✂] | [✂] |
| Self-funded TPA corporates | [✂] | [✂] | [✂] | [✂] |
| Total | | [✂] | | [✂] |

Source: CMA's estimates based on the information submitted by the Parties.

*Internal documents*

44. Internal documents submitted by AXA provided evidence that, in assessing its competitors, AXA tends to analyse the performance and product offerings of a core group of competitors, namely Bupa, Aviva, and VitalityHealth. When it considers Simplyhealth, it is often in the context of a wider competitive set including Simplyhealth, Allianz and CIGNA, among others.

[11] *Merger Assessment Guidelines*, from paragraph 5.4.6.

45. AXA submitted a number of internal documents testing brand awareness and consumers' perceptions of various PMI providers. One internal document (dated [✂] 2012) positions AXA as being a relatively close competitor to Simplyhealth, in terms of having [✂] and also in terms of being perceived as being somewhere in between a [✂][12] and a [✂].[13] However, this closeness was predicted to be weaker in the future since AXA was repositioning its brand through the creation of the Health Online brand. AXA provided evidence that its repositioning strategy has been successful[14] and that Bupa and AXA are seen as specialists in healthcare due to their experience in providing PMI, while other brands are more readily associated with other forms of insurance.

46. Simplyhealth submitted a more recent internal study (dated [✂] 2014) showing consumers' perceptions of various PMI providers. This study showed that, for individual customers, AXA was perceived to be close to Bupa, in terms of being a [✂][15] provider, and at the top end of the [✂], while Simplyhealth was at the bottom of this grouping. For corporate customers, there was again some distance between AXA and Simplyhealth with AXA being particularly close to Bupa in the [✂] category and Simplyhealth positioned between the [✂] category and [✂] category.

*Switching data*

47. AXA submitted internal documents from 2014 analysing customer switching. AXA surveyed individual and SME customers that had allowed their policies to lapse in an attempt to understand why those customers had lapsed and, if they had switched, which competitors those customers switched to.

48. AXA found that only a small number of individual customers switched to Simplyhealth ([✂]%), compared to switching of [✂]% to Aviva and [✂]% to VitalityHealth.[16] Other evidence provided by AXA shows switching to Aviva, Bupa and VitalityHealth, with Simplyhealth being included in a pool of 'other providers'.[17]

49. In the SME customer segment, a similarly small number of SME customers switched to Simplyhealth ([✂]%), while larger numbers of SME switched to VitalityHealth and Bupa ([✂]% and [✂]%, respectively).[18] Other evidence

[12] [✂]
[13] [✂]
[14] [✂]
[15] [✂]
[16] The CMA notes that this is from a small sample of switchers.
[17] [✂]
[18] [✂]

provided by AXA on SME switching shows similarly small proportions of customers switching to Simplyhealth ([✂]%).[19]

50. For large corporate customers, in 2014, AXA lost [✂] customers. Of these, [✂] ([✂]) identified as having been lost to Simplyhealth. More [✂] was lost to Bupa ([✂]%), Aviva ([✂]%) and VitalityHealth ([✂]%). Other internal documents showed that, where AXA had lost corporate customers, it was mainly to Bupa or Aviva ([✂] and [✂] occasions, respectively) out of [✂] occasions. These documents did not indicate AXA losing any of this business to Simplyhealth[20] (although the CMA notes that the competitor lost to was not cited in many instances).

*Third party views on closeness of competition between the Parties*

51. The CMA notes that some of the information provided by customers was inconsistent, contradictory or inconclusive; as such, it has not been possible to place a significant degree of weight on their views regarding closeness of competition between the Parties.

52. Responses from most customers identified AXA and Simplyhealth as close competitors, with one customer stating that all PMI providers were broadly the same. However, a number of customers did not believe Simplyhealth to be an alternative to AXA as they considered that it did not have the size/capability to deal with large, complex corporate plans.

53. Responses from brokers generally identified the Parties as close competitors across all customer groups. Two brokers disagreed, stating that either due to AXA's size or additional offerings in the individual and corporate segments, the Parties should not be considered close competitors.

54. Four large corporate/self-funded customers provided tender data to the CMA covering seven tendering processes. The Parties faced each other in three of the seven tender processes. In two of these, the Parties came first and second. This suggests that, for some customers, the Parties are close competitors. However, the CMA notes that the tendering customer (who was the same in both cases and submitted comments to the CMA) did not raise any concerns in relation to the Merger. In the other tender process, AXA won, followed by Bupa.

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[19] [✂]
[20] [✂]

*Conclusion on closeness of competition*

55. Overall, the CMA has found limited evidence to suggest that the Parties are close competitors. The evidence provided to the CMA shows that where AXA considers its competitors, it does not consider Simplyhealth except in the context of a wider competitive set. AXA tends to always consider the constraint from Bupa, Aviva, and VitalityHealth and this is consistent with the switching data which shows that AXA customers, including individuals, SME and corporate customers, do not tend to switch to Simplyhealth.

*Alternative providers*

56. The Parties submitted that there are four key players in the PMI market (Bupa, AXA, Aviva and VitalityHealth) as well as a number of smaller players (eg WPA, Simplyheath, Cigna, Exeter Friendly and CS Healthcare).

57. In responding to the CMA questionnaire, third parties identified a range of alternative providers of PMI services, and consistently mentioned Bupa, Aviva, and VitalityHealth as strong alternatives across all segments and geographies. Other providers mentioned included Healix,[21] Cigna and WPA.

58. Smaller insurers such as Cigna were also often identified as strong competitors, particularly in the large corporate and self-funded TPA corporate segments. VitalityHealth and Aviva were identified as particularly strong in corporate and self-funded TPA segments and Bupa as particularly strong in the private individuals segment.

59. The CMA considers that, while third parties have suggested that AXA and Simplyhealth competed pre-Merger, the evidence consistently indicates that the strongest competition for AXA arises from competitors such as Bupa, Aviva and VitalityHealth.

*Conclusion on horizontal unilateral effects*

60. As set out above, the CMA considers that the increment in the share of supply as a result of the Merger is small and that the market structure is broadly unchanged, with Bupa remaining the largest competitor and AXA the second largest supplier.

[21] In the UK, Healix manages medical claims for UK corporate healthcare schemes as well as handling UK private medical claims for overseas visitors on behalf of international PMI companies (https://healix.com/providers/). Healix is also identified as having gained subscribers from AXA in the switching data in Annex 94.

61. The CMA has found only limited evidence (through internal documents, third party comments and switching data) that the Parties were close competitors. Rather, evidence from internal documents shows that the Parties have different service and product propositions. While AXA's revenues are derived mainly from private individuals and large corporates (including self-funded TPA corporates), the Simplyhealth PMI business derives the majority of its revenue from the SME customer segment. The evidence provided to the CMA shows that AXA tends to consider the constraint from Bupa, Aviva, and VitalityHealth and does not consider Simplyhealth except in the context of a wider competitive set. Switching data also shows that AXA's customers do not tend to switch to Simplyhealth, but to Bupa, Aviva, and VitalityHealth.

62. In addition, based on the available evidence, the CMA considers that, post-Merger AXA will continue to be constrained by other PMI providers such as Bupa, Aviva and VitalityHealth. These are considered to be closer, strong competitors to AXA by customers and brokers. In particular, AXA is generally perceived as being closer to Bupa than Simplyhealth, in terms of: the level of brand awareness; being perceived as knowledgeable/specialists in healthcare; offering broad coverage and access to services and offering more standardised products.

63. Accordingly, the CMA finds that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of PMI in the UK.

***Barriers to entry and expansion***

64. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.[22]

65. The Parties submitted that there are generally low barriers to entry in the PMI market and cite examples of a number of recent new entrants such as H3 Insurance, Passport2Health, Medical Care Direct and April UK.[23] The Parties argued that while scale is an important factor for providing PMI, the necessary scale can be achieved in multiple ways, for example, through providing white-labelled products that are underwritten by another insurer. However, third

[22] *Merger Assessment Guidelines*, from paragraph 5.8.1.
[23] Merger notice, paragraphs 166–171.

parties did not mention any of these competitors during market testing as credible alternative PMI providers.

66. In this case, the CMA has not needed to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns.

### *Countervailing buyer power*

67. In some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. The CMA refers to this as countervailing buyer power.[24]

68. The Parties submitted that large corporate customers and intermediated customers have a degree of buyer power. The Parties state that intermediaries are incentivised to switch their customers between policies as new business commission is higher than renewal commission, and the Parties also state that intermediaries are necessary to gain business and are of sufficient size relative to PMI providers to exert buyer power. The Parties also submitted that large corporate customers have a degree of buyer power. This is because large customers know that insurers rely on scale to achieve lower costs from private healthcare providers, and the addition of a large customer by an insurer can lead to cost reductions for the insurer.

69. In this case, the CMA has not needed to conclude on countervailing buyer power as the Merger does not give rise to competition concerns.

## Third party views

70. The CMA contacted customers and competitors of the Parties as well as brokers/intermediaries. The CMA received questionnaire responses or comments from six brokers that sell AXA and/or Simplyhealth products, nine customers of AXA and/or Simplyhealth, six competitors and two suppliers. A number of these third parties raised concerns in relation to the Merger.

### *Concerns in relation to unilateral and coordinated effects*

71. Two third parties argued that the loss of Simplyhealth as a competitor, in an already concentrated market, raises competition concerns. The CMA has outlined in the competitive assessment (above) why it does not consider the Parties to be close competitors and considers there to be closer third party competitors remaining to constrain AXA post-Merger.

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[24] *Merger Assessment Guidelines*, from paragraph 5.9.1.

72. Concerns were also raised that post-Merger, AXA may stop offering the whole Simplyhealth product range, which was identified as an innovative and unique proposition. The CMA notes that AXA would not have an incentive to discontinue Simplyhealth's product range given the differences between the customers that the Parties serve, as described in paragraph 43 above. Furthermore, in the event that AXA discontinued any Simplyhealth products, this offering could be mimicked by other competitors some of which could react quickly. The CMA's market testing identified smaller companies in particular as being able to react to customer demands quickly.

73. One third party also suggested that the loss of Simplyhealth could assist the major PMI providers in coordinating consultant fee caps and benefit cuts. The CMA considers that the increment resulting from the Merger is small and that the market structure is broadly unchanged and therefore the Merger will not result in a realistic prospect of an SLC on the basis of coordinated effects.

### *Concerns in relation to buyer power*

74. Third parties stated that AXA's increased buying power post-Merger could force private healthcare providers to accept lower prices which would lead to lower quality services for end-customers. In relation to this concern, the CMA notes that, as highlighted above, the Merger leads to a small increment in the share of supply and that AXA and Simplyhealth do not appear to be close competitors. As such, the CMA considers that the Merger will have no significant effect on AXA's buyer power. The competitive assessment has outlined how the CMA believes sufficient competition will remain from other competitors post-Merger.

75. Third parties also expressed concerns that AXA's increased buying power post-Merger would mean that private healthcare providers would attempt to recoup the revenue lost to the Parties by charging smaller PMI providers more (and thus making them less competitive). This could result in two PMI providers (AXA and Bupa) remaining in the market and smaller providers, who cannot compete, exiting the market. As set out above (paragraph 74), the CMA considers that it is not credible that the Merger will have a sufficient effect on AXA's buyer power for there to be a realistic prospect of this arising from the Merger.

### *Conclusion on third party concerns*

76. In conclusion, the CMA does not consider these concerns further. For each of the concerns raised, the CMA does not consider that a merger specific effect is realistic due to the small increment resulting from the Merger and the limited closeness of competition between the Parties. The CMA also notes the

availability and strength of remaining competitors as alternatives for customers that are unhappy with AXA's quality and/or prices post-Merger.

## Decision

77. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.

78. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Jonathan Parker**
**Director of Mergers**
**Competition and Markets Authority**
**21 July 2015**