

COMPLETED ACQUISITION BY ACADIA HEALTHCARE COMPANY, INC. OF PRIORY GROUP NO. 1 LIMITED

Decision that undertakings might be accepted

ME/6587/16

Introduction

1. On 16 February 2016, Acadia Healthcare Company, Inc. (**Acadia**), through its subsidiary Whitewell UK Investments 1 Limited, acquired the entire issued share capital of Priory Group No. 1 Limited (**Priory**) (the **Merger**). Together, Acadia and Priory are referred to as the **Parties**.
2. Acadia, through its UK subsidiary Partnerships in Care (**PiC**), and Priory both supply a number of inpatient and outpatient mental healthcare and social care services to local authorities and to NHS organisations for children, adolescents and adults suffering from mental health conditions in the UK.
3. On 14 July 2016, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the UK (the **SLC Decision**).
4. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to Acadia of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 22(3)(b) on the date of the SLC Decision in order to allow Acadia the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.
5. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. On 21 July 2016, Acadia offered undertakings to the CMA for the purposes of section 73(2) of the Act.

6. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to Acadia that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

The undertakings offered

7. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC identified or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
8. The SLC Decision identified competition concerns due to certain overlaps between the Parties in the supply of the following five mental healthcare and social care services:
 - a) secure mental healthcare services (**Secure Services**);
 - b) specialist Tier 4 mental healthcare services for children and adolescents (**CAMHS Services**);
 - c) acute psychiatric services (**Acute Services**);
 - d) psychiatric intensive care unit services (**PICU Services**); and
 - e) hospital-based inpatient rehabilitation services (**Rehabilitation Services**).
9. In particular, the SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in relation to:
 - (a) the supply of low secure male learning difficulties Secure Services in the catchment area of Priory *Cefn Carnau* to national NHS commissioning bodies;
 - (b) the supply of medium secure male mental illness/personality disorder (**MI/PD**) Secure Services, medium secure female MI/PD Secure Services, low secure male MI/PD Secure Services, and low secure female MI/PD Secure Services in the catchment area of Priory *Chadwick Lodge and Eaglestone View* to national NHS commissioning bodies;

- (c) the supply of medium secure male MI/PD Secure Services and low secure female MI/PD Secure Services in the catchment area of Priory *Farmfield* to national NHS commissioning bodies;
 - (d) the supply of medium secure male MI/PD Secure Services and low secure male MI/PD Secure Services in the catchment area of Priory *Thornford Park* to national NHS commissioning bodies;¹
 - (e) the supply of eating disorder CAMHS Services to patients between 13 and 18 years of age (**CAMHS ED 13-18 Services**) in the area between the Priory sites of *Roehampton* and *Chelmsford* and the PiC facility of *Rhodes Wood*;
 - (f) the supply of Acute Services in the catchment area of PiC *Dene* (male only and combined);
 - (g) the supply of Acute Services in the catchment area of PiC *Kneesworth* (female only and combined);²
 - (h) the supply of PICU Services in the catchment area of Priory *Cheadle* (male only, female only and combined);³ and
 - (i) the supply of certain Rehabilitation Services in each of the catchment areas of the Priory sites at *Aberdare*, *Bristol*, *Chadwick Lodge* and *Eaglestone View*, *Church Village*, *Hemel Hempstead*, *Highbank Center*, *Keighley*, *Middleton St George*, *Recovery First*, *St Neots*, *Sturt House*, *Ticehurst* and *Ty Gwyn Hall* to CCGs, NHS trusts and local authorities.⁴
10. Acadia has offered to give undertakings in lieu of a reference to divest the 19 facilities indicated in the Annex to this document (the **Divestment Businesses**) in order to address these competition concerns (the **Proposed Undertakings**). Key staff, supplier contracts and customer relationships would be divested as part of the Divestment Businesses.

¹ The CMA refers to each of the four Priory sites supplying the relevant Secure Services whilst noting that concerns also arise when the catchment area is centred around the relevant PiC site(s) that overlap(s) with each of the identified Priory sites.

² The CMA refers to each of the two PiC sites supplying Acute Services whilst noting that concerns also arise when the catchment area is centred around the relevant Priory site(s) that overlap(s) with each PiC site.

³ The catchment area of Priory Cheadle includes [X]. The concern arises in this local area as a result of the overlap between both of these Priory sites and the two nearby PiC sites, as discussed further in the SLC Decision's competitive assessment.

⁴ The specific segments within Rehabilitation Services for each of the relevant catchment areas where a realistic prospect of an SLC has been identified are set out in the SLC Decision's competitive assessment of Rehabilitation Services. The CMA refers to each of the relevant Priory sites providing the affected services, whilst noting that concerns also arise when the catchment area is centred around nearby PiC sites that overlap with the Priory site.

11. Under the Proposed Undertakings, Acadia has offered to enter into a purchase agreement with a buyer or buyers approved by the CMA before the CMA finally accepts the Proposed Undertakings (**Upfront Buyer Condition**).

The CMA's provisional views

12. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.⁵
13. The CMA considers that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA, for the following reasons:
 - (a) in relation to the SLC identified in the supply of certain Secure Services in the catchment areas of Priory *Chadwick Lodge and Eaglestone View*, Priory *Farmfield*, Priory *Thornford Park*, and Priory *Cefn Carnau*, the Proposed Undertakings result in the divestment of all of Priory's facilities that offered these Secure Services prior to the Merger;
 - (b) in relation to the SLC identified in the supply of CAMHS ED 13-18 Services in the area between the Priory sites of *Roehampton* and *Chelmsford* and the PiC facility of *Rhodes Wood*, the Proposed Undertakings recreate the competitive conditions prevailing pre-merger;
 - (c) in relation to the SLC identified in the supply of certain Acute Services in the catchment area around PiC *Dene* and PiC *Kneesworth*, the Proposed Undertakings remove the increment resulting from the Merger (in terms of bed numbers) and preserve local competition around both of the PiC facilities;
 - (d) in relation to the SLC identified in the supply of PICU Services in the catchment area of Priory *Cheadle* (male only, female only and combined), the Proposed Undertakings reduce the increment resulting from the Merger to one bed, with the transfer of two PICU wards from *Priory Cheadle* to the *Recovery First* Divestment Business; and
 - (e) in relation to the SLC identified in the supply of certain Rehabilitation Services, the Proposed Undertakings remove the increment (in terms of

⁵ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

bed numbers) resulting from the Merger and maintain the level of pre-merger competition around each of the remaining Priory and PiC sites.

14. The CMA believes that these Proposed Undertakings may replace the competitive constraint provided by Priory on PiC (and vice versa) that would otherwise be lost following the Merger.
15. Accordingly the CMA currently considers that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also believes at this stage that the Proposed Undertakings may be capable of ready implementation.
16. The Upfront Buyer Condition means that the CMA will only accept the Proposed Undertakings after Acadia has entered into an agreement with a nominated buyer (or a series of agreements with nominated buyers) that the CMA considers to be suitable. It also means that, before acceptance, the CMA will consult publicly on the suitability of the nominated buyer or buyers, as well as other aspects of the Proposed Undertakings. The CMA considers that an Upfront Buyer Condition is necessary because of the scale and complexity of the divestment package offered in the Proposed Undertakings.⁶
17. For these reasons, the CMA currently considers that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.
18. The CMA's decision on whether ultimately to accept the Proposed Undertakings or to refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA. In particular, before ultimately accepting the Proposed Undertakings, the CMA must be confident that the nominated buyer or buyers are effective and credible such that the competitive constraint provided by Priory absent the Merger is replaced to a sufficient extent.

Consultation process

19. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.⁷

⁶ See [OFT1122](#), paragraphs 5.31–5.37, and [CMA2](#), paragraph 8.34.

⁷ [CMA2](#), paragraph 8.29.

Decision

20. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by Acadia, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 23 September 2016 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 18 November 2016 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

Andrea Coscelli
Acting Chief Executive
Competition and Markets Authority
28 July 2016

COMPLETED ACQUISITION BY ACADIA HEALTHCARE COMPANY, INC. OF PRIORY GROUP NO. 1 LIMITED

List of the proposed Divestment Businesses

Divestment Business	Current Owner	Services
<i>Cefn Carnau</i>	Priory	Secure Services
<i>Chadwick Lodge and Eaglestone view</i>	Priory	Secure Services Rehabilitation Services
<i>Farmfield</i>	Priory	Secure Services
<i>Thornford Park</i>	Priory	Secure Services
<i>Rhodes Wood</i>	PiC	CAMHS Services
<i>Potters Bar</i>	Priory	Acute Services
<i>Brighton</i>	Priory	Acute Services
<i>Recovery First</i>	Priory ⁸	PICU Services ⁹ Rehabilitation Services
<i>Ty Gwyn Hall</i>	Priory	Rehabilitation Services
<i>The Copse</i>	PiC	Rehabilitation Services
<i>Aderyn</i>	PiC	Rehabilitation Services
<i>Rosebank House</i>	PiC	Rehabilitation Services
<i>Bromley Road</i>	PiC	Rehabilitation Services
<i>St Neots</i>	Priory	Rehabilitation Services
<i>Braeburn House</i>	Priory	Rehabilitation Services

⁸ The *Recovery First* facility is operated by Priory in partnership with the Greater Manchester West Mental Health NHS Foundation Trust.

⁹ As part of the Proposed Undertakings, two PICU wards (one male and one female) will be transferred from *Priory Cheadle* to *Recovery First*. [X].

<i>Keighley</i>	Priory	Rehabilitation Services
<i>Brierley Court</i>	PiC	Rehabilitation Services
<i>Springwood Lodge</i>	PiC	Rehabilitation Services
<i>Sturt House</i>	Priory	Rehabilitation Services