

Completed acquisition by Acadia Healthcare Company, Inc. of Priory Group No. 1 Limited

Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on proposed undertakings in lieu of reference pursuant to section 73 of the Act

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**).
2. Acadia and Priory are together referred to as the **Parties**. 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 situation¹ that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**). On 21 July 2016, Acadia offered undertakings in lieu of reference (**UILs**) to the CMA for the purposes of section 73(2) of the Act.
4. On 28 July the CMA gave notice to Acadia, pursuant to section 73A(2)(b) of the Act, that it considered that there were reasonable grounds for believing that the undertakings offered, or a modified version of them, might be

¹ Pursuant to section 25(4) of the Act the four-month period mentioned in section 24 of the Act is extended while the CMA is seeking undertakings in lieu of reference.

accepted by the CMA under section 73(2) of the Act and that it is considering Acadia's offer (the **UILs Notice**).

5. As set out in the SLC Decision, the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Merger for a phase 2 investigation. The text of the SLC Decision is available on the CMA webpages.²

The SLC Decision

6. As set out in the SLC Decision, the CMA identified competition concerns due to certain overlaps between the Parties in relation to the supply of the following five mental healthcare and social care services in England and Wales:
 - (a) secure mental healthcare services (**Secure Services**) provided to NHS England (**NHSE**) and NHS Wales (**NHSW**);
 - (b) specialist Tier 4 mental healthcare services provided to children and adolescents aged 13-18 years of age with eating disorders (**CAMHS ED 13-18 Services**) to NHSE and NHSW;
 - (c) acute psychiatric services (**Acute Services**) to Clinical Commissioning Groups (**CCGs**) and NHS trusts;
 - (d) psychiatric intensive care unit services (**PICU Services**) provided to CCGs and NHS trusts; and
 - (e) hospital-based inpatient rehabilitation services (**Rehabilitation Services**) to CCGs and local authorities
7. Specifically, the CMA found that the Merger gave rise to a realistic prospect of an SLC in relation to the supply of these services in the following local areas:
 - (a) the supply of low secure male learning difficulties (**LD**) 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

² See <https://www.gov.uk/cma-cases/acadia-healthcare-company-priory-group-merger-inquiry>

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;³
- (e) 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*;
- (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);⁴
- (h) the supply of PICU Services in the catchment area of Priory *Cheadle* (male only, female only and combined);⁵ 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.⁶

³ 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.

⁴ 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.

⁵ 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.

⁶ 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.

The undertakings offered

8. To address the SLCs identified by the CMA in each of the local areas described above, Acadia initially offered to divest the 19 facilities set out in the UILs Notice. This included a combination of both Priory and PiC assets. Key staff, including an executive management team, supplier contracts and customer relationships would be divested as part of the proposed UILs. For the reasons set out in the UILs Notice (in particular at paragraphs 12-16), the CMA considered that there were reasonable grounds for believing that the undertakings offered by Acadia, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.
9. Following the UILs Notice, the Parties proposed certain limited modifications to their initial offer. Specifically:
 - (a) To address the SLC arising in relation to the supply of PICU Services in the catchment area of Priory Cheadle, the Parties originally proposed to transfer two PICU wards (one male and one female) from Priory Cheadle to Priory Recovery First, which would then be divested. The Parties have now proposed instead to divest Acadia's existing PICU activities at PiC Arbury Court and at PiC The Spinney. This would result in the divestiture of the entire increment of PiC's PICU facilities in the Priory Cheadle catchment area. Recovery First would continue to be divested to address concerns in relation to Rehabilitation Services in the local area; and
 - (b) The Parties also now propose to divest PiC's Wellesley property, which is a site intended to provide Secure Services in South West England. This site has been built but is not yet open.
10. In light of the above, the Parties now propose to divest a total of 21 operating hospitals and one property to address the CMA's competition concerns (the **Divestment Sites**) (the **Proposed Undertakings**). The Divestment Sites, and the SLC finding to which they relate, are listed at **Annex 1**.
11. Each hospital divestiture will involve the transfer of the freehold of each site to the purchaser, together with associated customer and supplier contracts, and key staff and medical personnel (together, the **Divestment Business**). Full details of the proposed divestment package for each Divestment Site are provided in **Annex 1 to the Proposed Undertakings**, which has been published on the case page.
12. Acadia agreed to enter into an agreement to sell the Divestment Business to an upfront buyer, before the CMA finally accepts the Proposed Undertakings. Acadia has proposed either BC Partners (**BC**) or Advent funds (**Advent**),

managed by Advent International Corporation (**AIC**), as upfront buyers (together the **Proposed Purchasers**). The agreement will be conditional on acceptance by the CMA of the Proposed Undertakings, including approval of either BC or Advent as the buyer of the Divestment Business.

13. The Parties have proposed to implement certain transitional arrangements to fully effect the transfer to the prospective purchaser and to ensure that the Divestment Business can operate as a standalone and viable competitor as of day one. These will be provided by Acadia to the prospective purchaser under a transitional services agreement (**TSA**), which must be approved by the CMA prior to the signing of the SPA. The CMA will require the TSA to include sufficient safeguards to prevent or mitigate the effects of competitively sensitive information being transferred between Acadia and the prospective purchaser.

CMA assessment

Suitability of the proposed UILs

14. The CMA currently believes, subject to responses to this consultation, that the Proposed Undertakings will resolve the SLCs identified in the SLC Decision in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.⁷
15. This is because:
 - (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 and so fully remove the increment resulting from the Merger in relation to these services;
 - (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, as they divest the entire PiC increment;

⁷ *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).

- (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 so maintain the level of pre-merger 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 remove the increment resulting from the Merger, as they now involve the divestment of PiC's only PICU facilities in that area; and
 - (e) in relation to the SLC identified in the supply of certain Rehabilitation Services, the Proposed Undertakings remove the increment (in terms of bed numbers) resulting from the Merger and so maintain the level of pre-merger competition around each of the remaining Priory and PiC sites.
16. Given that the Divestment Sites now include a combination of all of the former Priory facilities that supply Secure Services, as well as three PiC facilities that also supply Secure Services, the CMA investigated whether this could itself give rise to competition concerns in the supply of those services.
 17. PiC's *The Spinney* and *Arbury Court* do not overlap with the catchment area of any other Divestment Sites which supply Secure Services. PiC's *Wellesley* site currently has no patients, but it is within the catchment area of Priory's *Thornford Park*, which is a Divestment Site which supplies Secure Services. However, the CMA considers that the Proposed Undertakings (considering the anticipated beds at the *Wellesley*) will re-create the pre-existing competitive situation around the *Wellesley* and *Thornford Park* sites, as there will continue to be the same number of competitors in the relevant catchment areas around these sites with approximately the same shares of supply as under the pre-Merger competitive conditions. Therefore, the CMA currently believes that the addition of the *Wellesley* to the Divestment Business does not create a competition concern.
 18. In light of the above, the CMA currently believes that the combination of the Priory and some PiC Secure Services facilities will not give rise to competition concerns, but will instead serve to strengthen the competitive constraint that the Proposed Purchaser will be able to exert on the market.
 19. The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because the Divestment Business is an ongoing business which will be managed by the experienced existing management team of PiC.

Suitability of the proposed purchasers

20. In approving a purchaser, the CMA's starting position is that it must be confident, without undertaking a detailed investigation, that the proposed purchaser will restore pre-merger levels of competition. The CMA therefore seeks to ensure that:
- (a) the acquisition by the purchaser remedies, mitigates or prevents the SLC concerned and any adverse effect resulting from it;
 - (b) the proposed purchaser is independent of and unconnected to the merging parties;
 - (c) the proposed purchaser has the necessary financial resources, expertise, incentive and intention to maintain and operate the divested business as an effective competitor in the marketplace;
 - (d) the proposed purchaser can be reasonably expected to obtain all necessary approvals, licences and consents from any regulatory or other authority; and
 - (e) the acquisition by the proposed purchaser does not itself create an SLC within any market or markets in the UK.⁸
21. In this case, Acadia has put forward BC and Advent as the Proposed Purchasers.
22. Acadia has told the CMA that, if either of the Proposed Purchasers were to acquire the Divestment Business, the executive management team of PiC would transfer to the Divestment Business.

BC

23. BC is a private equity firm which has invested over the last 16 years across various segments of the healthcare system. BC invested previously in PiC from 2000 to 2005, as PiC formed part of the General Healthcare Group (**GHG**). GHG sold PiC to a third party in 2005. GHG ceased being in BC's portfolio in 2006. The ownership of PiC has provided BC with significant experience in operating behavioural health facilities. A number of the executive management team who are expected to lead the Divestment Business were senior members of PiC during the period of BC's ownership.

⁸ [OFT1122](#), paragraphs 5.25–5.30.

24. BC told the CMA that currently it does not have any activities in the UK in the same markets as the Divestment Business.
25. As regards independence, BC does not have any structural or financial links with Acadia, aside from the prior working relationship with certain members of the proposed executive team of the Divestment Business.
26. As regards financial resources, BC told the CMA that it is able to finance the acquisition with a combination of equity funding and third party bank debt sourced for the purposes of this acquisition.
27. The anticipated management team of the Divestment Business is experienced and is currently active in the UK mental healthcare and social care sector, and BC has previous experience investing in the sector. The CMA therefore believes that it is reasonable to expect BC to be able to obtain all necessary approvals, licences and consents from any regulatory or other authority.
28. The CMA also believes that the acquisition by BC does not itself create an SLC within any market or markets in the UK.
29. Therefore, subject to responses to this consultation, the CMA currently considers BC to be a suitable purchaser of the Divestment Business.

Advent

30. Advent has holdings in various sectors, including healthcare and pharmaceuticals. AIC and/or its affiliates (**Advent International**) has detailed insight into and experience of the mental healthcare and social care sector, particularly with respect to the Priory facilities that are included in the Divestment Business, as in 2008 Advent acquired Craegmoor (which was subsequently acquired by Priory) and in 2011 Advent also acquired Priory. Advent sold Priory to Acadia in February 2016.
31. Advent International told the CMA that currently Advent does not have any activities in the UK in the service lines of the Divestment Business (i.e. Secure Services, CAMHS Services, Acute Services, PICU Services or Rehabilitation Services).
32. As regards independence, Advent International told the CMA that, as part of the disposal of Priory to Acadia, Acadia issued shares to Advent as consideration. AIC said that Advent had sold the majority of these shares but still retained 370,913 shares corresponding to 0.4 % of the ordinary shares of Acadia common stock, which they intend to dispose of in due course. Advent told the CMA that neither Advent International nor Advent are an affiliate of,

have no governance rights in respect of, and have no other commercial links to Acadia.

33. As regards financial resources, Advent International told the CMA that Advent is able to finance the acquisition with a combination of equity funding from their investors and third party bank debt sourced for the purposes of this acquisition.
34. The anticipated management team of the Divestment Business is experienced and is currently active in the UK mental healthcare and social care sector, and Advent have previous experience investing in the sector. The CMA therefore believes that it is reasonable to expect Advent to be able to obtain all necessary approvals, licences and consents from any regulatory or other authority.
35. The CMA also believes that the acquisition by Advent does not itself create an SLC within any market or markets in the UK.
36. Therefore, subject to responses to this consultation, the CMA currently considers Advent to be a suitable purchaser of the Divestment Business.

Proposed decision and next steps

37. For the reasons set out above, the CMA currently believes that the Proposed Undertakings and the purchase of the Divestment Business by either of the Proposed Purchasers, in the circumstances of this case, is appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
38. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the proposed undertaking is available on the CMA case page.⁹
39. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.¹⁰
40. Representations should be made in writing to the CMA and be addressed to:

⁹ See <https://www.gov.uk/cma-cases/acadia-healthcare-company-priory-group-merger-inquiry>

¹⁰ Under paragraph 2(4) of Schedule 10 to the Act.

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Deadline for comments: 22 October 2016

Annex 1

List of the proposed Divestment Sites

Divestment Site	Current Owner	SLC Market(s) Addressed
<i>Cefn Carnau</i>	Priory	The supply of certain Secure Services in the catchment area of <i>Cefn Carnau</i> .
<i>Chadwick Lodge and Eaglestone view</i>	Priory	The supply of: a) certain Secure Services in the catchment area of <i>Chadwick Lodge and Eaglestone View</i> ; and b) certain Rehabilitation Services in the catchment areas of <i>Chadwick Lodge and Eaglestone View</i> .
<i>Farmfield</i>	Priory	The supply of certain Secure Services in the catchment area of <i>Farmfield</i> .
<i>Thornford Park</i>	Priory	The supply of certain Secure Services in the catchment area of <i>Thornford Park</i> .
<i>Rhodes Wood</i>	PiC	The supply of CAMHS ED 13-18 Services in the area between the Priory sites of <i>Roehampton</i> and <i>Chelmsford</i> and the PiC facility of <i>Rhodes Wood</i> .
<i>Potters Bar</i>	Priory	The supply of certain Acute Services in the catchment area of <i>The Dene</i> and in the catchment area of <i>Kneesworth</i> .
<i>Brighton</i>	Priory	The supply of certain Acute Services in the catchment area of <i>The Dene</i> .
<i>Recovery First</i>	Priory ¹¹	The supply of certain Rehabilitation Services in the catchment area of <i>Cheadle</i> .

¹¹ The *Recovery First* facility is operated by Priory in partnership with the Greater Manchester West Mental Health NHS Foundation Trust.

<i>Ty Gwyn Hall</i>	Priory	The supply of certain Rehabilitation Services in the catchment areas of <i>Aberdare, Bristol, Church Village</i> and <i>Ty Gwyn Hall</i> .
<i>The Copse</i>	PiC	The supply of certain Rehabilitation Services in the catchment areas of <i>Aberdare, Bristol</i> and <i>Church Village</i> .
<i>Aderyn</i>	PiC	The supply of certain Rehabilitation Services in the catchment areas of <i>Aberdare</i> and <i>Bristol</i> .
<i>Rosebank House</i>	PiC	The supply of certain Rehabilitation Services in the catchment areas of <i>Bristol, Hemel Hempstead</i> and <i>Ticehurst</i> .
<i>Bromley Road</i>	PiC	The supply of certain Rehabilitation Services in the catchment areas of <i>Hemel Hempstead</i> and <i>Ticehurst</i> .
<i>St Neots</i>	Priory	The supply of certain Rehabilitation Services in the catchment areas of <i>Hemel Hempstead</i> and <i>St. Neots</i> .
<i>Braeburn House</i>	Priory	The supply of certain Rehabilitation Services in the catchment area of <i>Highbank Centre</i> .
<i>Keighley</i>	Priory	The supply of certain Rehabilitation Services in the catchment areas of <i>Highbank Centre, Keighley</i> and <i>Middleton St George</i> .
<i>Brierley Court</i>	PiC	The supply of certain Rehabilitation Services in the catchment area of <i>Highbank Centre</i> .
<i>Springwood Lodge</i>	PiC	The supply of certain Rehabilitation Services in the catchment area of <i>Highbank Centre</i> .
<i>Sturt House</i>	Priory	The supply of certain Rehabilitation Services in the catchment area of <i>Sturt House</i> .
<i>Spinney</i> ¹²	PiC	The supply of certain PICU Services in the catchment area of <i>Cheadle</i> .
<i>Arbury Court</i> ¹³	PiC	The supply of certain PICU Services in the catchment area of <i>Cheadle</i> .
<i>Wellesley</i> ¹⁴	PiC	N/A

¹² As part of the Proposed Undertakings, the Parties have offered to divest two additional PiC sites (the Spinney and Arbury Court) and one property (the Wellesley). See paragraph 9 above.

¹³ *Ibid*

¹⁴ *Ibid*