

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

## Decision on acceptance of undertakings in lieu of reference

**ME/6587/16**

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 10 November 2016. Full text of the decision published on 8 December 2016.

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

### 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. The CMA imposed an initial enforcement order (the Order) on 17 February 2016. Acadia voluntarily appointed a monitoring trustee to assist the CMA in considering requests for derogations from the Order. The CMA launched its formal investigation of the Merger on 18 May 2016.
4. 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<sup>1</sup> 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**).

5. 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. 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 accepted by the CMA under section 73(2) of the Act and that it was considering Acadia's offer (the **UILs Notice**).
6. The text of the SLC Decision and the UILs Notice are available on the CMA webpages.<sup>2</sup>

## The SLC Decision

7. 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
8. 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:

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<sup>1</sup> 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.

<sup>2</sup> See [the case page](#).

- (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 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;<sup>3</sup>
- (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);<sup>4</sup>
- (h) the supply of PICU Services in the catchment area of Priory *Cheadle* (male only, female only and combined);<sup>5</sup> 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,*

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<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

*Keighley, Middleton St George, Recovery First, St Neots, Sturt House, Ticehurst and Ty Gwyn Hall to CCGs, NHS trusts and local authorities.*<sup>6</sup>

## The undertakings offered

9. As set out in the UILs Notice and as subsequently modified, Acadia has offered to divest 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**.
10. Acadia agreed to enter into an agreement to sell the Divestment Business to an upfront buyer, before the CMA's final acceptance of the Proposed Undertakings. Acadia has proposed BC Partners as an upfront buyer (the **Proposed Purchaser**).

## Consultation

11. On 7 October 2016, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the UILs, inviting interested parties to give their views.<sup>7</sup> For the reasons set out in the consultation, the CMA's preliminary view was that the UILs would 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 UILs or concerns about their implementation, and that BC Partners would be a suitable purchaser.<sup>8</sup>
12. On 24 October 2016, pursuant to paragraph 2(4) of Schedule 10 to the Act, the CMA published a modified version of the UILs inviting interested parties to give their views.
13. The CMA received no submissions during either consultation period. Accordingly, no third party submissions caused the CMA to change its preliminary view that the UILs would be acceptable.
14. The CMA therefore considers that the UILs offered by Acadia are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns

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<sup>6</sup> 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 Priority 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 Priority site.

<sup>7</sup> The full consultation text was published on [the case page](#).

<sup>8</sup> *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).

identified in the SLC Decision and that BC Partners is a suitable purchaser of the Divestment Business.

## **Decision**

15. For the reasons set out above, the CMA believes that the UILs provided by Acadia are as comprehensive a solution as is reasonable and practicable, and that they will remedy, mitigate or prevent the SLC identified in the SLC Decision and any adverse effects resulting from it. The CMA has therefore decided to accept the UILs offered by Acadia pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
16. The undertakings, which have been signed by Acadia and will be published on the CMA webpages,<sup>9</sup> will come into effect from the date of this decision.

**Andrea Coscelli**  
**Acting Chief Executive**  
**Competition and Markets Authority**  
**10 November 2016**

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<sup>9</sup> See [the case page](#).

## Annex 1

### List of the proposed Divestment Sites

<b>Divestment Site</b>	<b>Current Owner</b>	<b>SLC Market(s) Addressed</b>
<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 <sup>10</sup>	The supply of certain Rehabilitation Services in the catchment area of <i>Cheadle</i> .

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<sup>10</sup> 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>	PiC	The supply of certain PICU Services in the catchment area of <i>Cheadle</i> .
<i>Arbury Court</i>	PiC	The supply of certain PICU Services in the catchment area of <i>Cheadle</i> .
<i>Wellesley</i>	PiC	N/A