CMA
Competition & Markets Authority

Completed acquisition by Bupa Finance Plc of The Oasis Healthcare Group Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6665/17

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 16 March 2017. Full text of the decision published on 22 March 2017.

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. On 9 February 2017, Bupa Finance Plc (**Bupa**) (a wholly owned subsidiary of The British United Provident Association Limited) acquired The Oasis Healthcare Group Limited (**Oasis**) (the **Merger**). Bupa and Oasis are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties' enterprises have ceased to be distinct and that the turnover test is met. The four-month period for a decision has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

3. The Parties overlap in the supply of dental services to private patients in the UK, including general dental services, orthodontic services and other specialist treatments. The CMA has assessed the impact of the Merger at a local level.

4. In line with previous decisions of the CMA, and having regard to the particular evidence in this case, the CMA has assessed the impact of the Merger in the following product and geographic frames of reference:

(a) The provision of general dental services to private patients within the following catchment areas around each of the Parties' practices:[1]

(i) 2.5 miles, and 13 miles for Bupa sites, within the M25;

(ii) 5 miles and 8 miles, and 13 miles for Bupa sites, in urban areas;

(iii) 8 miles and 13 miles in rural areas;

(b) The provision of specialist dental services (orthodontics, minor oral surgery, prosthodontics, periodontics, endodontics, restorative dentistry and implants, each a separate frame of reference) to private patients within a 7 mile and 23 mile catchment area around each of the Parties' practices.

5. It was not necessary for the CMA to conclude on the precise scope of the relevant product or geographic frame of reference since, as explained below, no competition concerns arise on any plausible basis.

6. In light of the particular evidence in this case, the CMA applied conservative filters to the local overlap areas where the Parties had competing practices, using both fascia counts and combined shares of practices. The CMA also took into account the size and capacity of the Parties' practices where evidence was available. For the limited number of local areas which did not pass the filters, the CMA then conducted a more detailed assessment, including contacting the Parties' competitors where appropriate.

7. In light of the evidence gathered, the CMA believes that post-Merger the Parties' dental practices will continue to be sufficiently constrained by competing dental practices in all local areas of the UK in which the Parties overlap. The CMA therefore believes that the Merger will not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in relation to the provision of general or specialist dental services to private patients in any local area in the UK.

8. There is also a limited overlap between the Parties in the supply of dental services to NHS patients in the UK. However, due to Bupa's very limited supply to NHS patients, and on the basis of third party evidence, the CMA

[1] On a cautious basis, the CMA assessed the effects of the Merger by i) referring to the catchment areas established in previous cases; ii) reviewing a sample of the 80% catchment areas of the Parties' practices (ie the areas within which 80% of patients access a practice from their home postcodes) and applying sensitivity checks; and iii) for areas requiring more detailed local assessment, referring to the actual 80% catchment areas of the practices in question.

does not believe that there is a realistic prospect of an SLC in relation to the supply of general or specialist dental services to NHS patients.

9. The Merger also involves a vertical relationship between the Parties due to the connection between the dental services provided by Oasis and the dental insurance products supplied by Bupa. The CMA considered whether competition concerns could arise as a result of Bupa engaging in foreclosure strategies by, for example, making it harder for rival dentists to supply services to its policyholders (foreclosing rival dentists) or by making it harder for rival insurers to access dental services (foreclosing rival insurers).

10. Given in particular the Parties' low shares of supply in both insurance and dental services, the CMA concluded that the merged entity would not have the ability to harm rivals in this way. The CMA therefore believes that the Merger will not give rise to a realistic prospect of an SLC as a result of vertical effects.

11. For these reasons the Merger will **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

12. Bupa is a global health and care company headquartered in the UK. Bupa runs care homes, retirement and care villages, primary care, diagnostics and wellness centres and hospitals, and also provides health insurance, medical subscription and other health and care funding products. Within the dentistry sector, Bupa provides private dental services from 39 dental clinics in the UK,[2] and also provides dental insurance. The turnover of Bupa in the financial year ending 31 December 2015 was around £9,457m worldwide and around £[2,000-4,000]m in the UK.

13. Oasis provides private and NHS dental services throughout the UK and Ireland. Oasis currently operates 361 dental practices in the UK. The turnover of Oasis in the financial year ending 31 March 2016 was around £275m worldwide and around £[200-400]m in the UK.

Transaction

14. The Parties entered into a share sale agreement on 18 November 2016 under which Bupa agreed to acquire 100% of Oasis.

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[2] One of Bupa's practices, located in Bristol, closed down during the CMA's investigation due to [✂].

15. The Merger completed on 9 February 2017.

Jurisdiction

16. As a result of the Merger, the enterprises of Bupa and Oasis have ceased to be distinct.

17. The UK turnover of Oasis exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

18. As noted above, the Merger completed on 9 February 2017, during the CMA's investigation. The four month deadline for a decision under section 24 of the Act is therefore 9 June 2017.

19. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

20. The Merger meets the thresholds under Council Regulation (EC) 139/2004 (the **EC Merger Regulation**) for review by the European Commission. The Parties submitted a reasoned submission to the European Commission on 23 December 2016 requesting pre-notification referral to the CMA under Article 4(4) of the EC Merger Regulation. The CMA informed the Commission that it agreed with the referral request and considered the Merger capable of being reviewed in the UK under the Act. On 3 February 2017, the European Commission announced its decision to refer the Merger to the CMA for review.

21. The preliminary assessment period for consideration of the Merger under section 34A(2) of the Act started on 6 February 2017. The statutory 45 European Commission working day deadline for a decision is therefore 7 April 2017.

Counterfactual

22. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger 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 believes 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.[3]

23. In this case, there is no evidence supporting a different counterfactual, and Bupa and third parties have not put forward arguments in this respect. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

Frame of reference

24. 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.[4]

25. As noted above, the Parties overlap in the supply of general and specialist dental services to private patients in the UK.

26. There is also a limited overlap between the Parties in the supply of dental services to NHS patients in the UK. However, although Oasis offers services to NHS patients at many of its practices, Bupa has NHS contracts at just two of its practices. These practices were already providing dental services to NHS patients when they were acquired by Bupa (Kelvin Lodge, Newcastle, valued at around £[50,000-100,000], and St Ann's, Manchester, valued at around £[200,000-300,000]). Both contracts [✂]. Bupa told the CMA that it would [✂].

27. The CMA contacted the NHS commissioning bodies in the areas where Bupa holds NHS contracts. They did not express concerns about the Merger and explained that there were a number of other providers contracted for NHS services in the relevant areas, with the Parties comprising only a small share of total NHS supply.

28. Due to Bupa's very limited presence in the provision of dental services to NHS patients, and the evidence from the relevant NHS commissioning bodies, the CMA does not believe that there is a realistic prospect of an SLC in the supply

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3 *Merger Assessment Guidelines* (OFT1254/CC2), September 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), January 2014, Annex D).
4 *Merger Assessment Guidelines*, paragraph 5.2.2.

of general or specialist dental services to NHS patients in the UK, or in any local area in the UK. For this reason, this possible frame of reference is not discussed further.

29. Bupa is also active in the provision of dental insurance.

Product scope

30. In previous cases, the CMA and the Office of Fair Trading (**OFT**) have distinguished between NHS and private dental services, and between general dentistry and specialist treatments (specialist treatments include orthodontics, endodontics, minor oral surgery, restorative dentistry, prosthodontics, periodontics, and implants).[5] The CMA considered both of these issues for the purposes of its competitive assessment in this case.

Provision of services to NHS and/or private patients

31. From a demand-side perspective, surveys conducted by (or on behalf of) the Parties indicated that a very low proportion of those private patients switching dentists switched to an NHS dentist. These results are consistent with the findings from an earlier survey conducted by the OFT.[6] The CMA believes that this evidence indicates a low degree of demand-side substitutability between private and NHS dentistry.

32. However, Bupa submitted that no distinction should be drawn between NHS and private dental services for the purposes of the CMA's competitive assessment. Bupa stated that there is scope for supply-side substitutability, given the majority of dental practices in the UK provide both NHS and private services to patients, and the two services are usually provided by the same staff from the same premises, using the same equipment.

33. Notwithstanding Bupa's submission, the CMA noted internal documents from the Parties, and industry reports provided by the Parties, which drew a clear distinction between the provision of private and NHS dental treatments. The CMA did not find clear evidence that dental practices have the incentive to shift capacity rapidly from NHS to private dentistry or that the same firms

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5 Completed acquisition by Oasis Dental Care (Central) Limited of Total Orthodontics Limited, decision dated 2 September 2015, Completed acquisition by Oasis Dental Care (Central) Limited of JDH Holdings Limited, decision dated 28 July 2014, Completed joint venture between the Carlyle Group and Palamon Capital Partners LP for the acquisition of Integrated Dental Holdings Group and Associated Dental Practices, decision dated 10 June 2011.

6 OFT 1419, Dentistry Consumer Research: A Research Report by TNS-BMRB, January 2012, referred to in the OFT market study in dentistry, OFT 1414, January 2012 (OFT dentistry market study).

compete to supply both products (eg most Bupa practices supply only private dentistry).

34. Based on this evidence, the CMA assessed the effects of Merger in the provision of private dental services as a separate product frame of reference.

Provision of general dental and/or specialist dental services

35. Bupa submitted that it was appropriate to follow the approach taken by the CMA in a previous case and distinguish between the following types of dental services:

    (a) General dental treatments;

    (b) Orthodontics;

    (c) Minor oral surgery;

    (d) Prosthodontics;

    (e) Periodontics;

    (f) Endodontics;

    (g) Restorative dentistry; and

    (h) Implants.

36. The Parties overlap in the provision of each of these services.

37. On the demand-side, in line with previous decisions, the CMA found that substitution between general dental and specialist treatments and between the different specialist treatments is limited, as there are different treatments for different dental requirements.

38. The CMA considered whether there might be a degree of supply-side substitutability in the provision of these different treatments. The General Dental Council (**GDC**) maintains lists of 'specialist' dentists who meet certain conditions and who are entitled to refer to themselves as 'specialists' in a particular type of dental treatment. However, a general dentist is able to provide specialist dental services to patients without registration as a specialist with the GDC. Third parties suggested that, within each specialism, there are simple treatments and more complex treatments. They said that, although many general dentists might provide some simple specialist treatments, they will often refer on patients to more highly-trained specialists for more complex specialist treatments.

39. For the reasons set out above, and on a cautious basis, the CMA assessed the impact of the Merger on the basis of each specialist service as a separate product frame of reference.

Conclusion on product scope

40. For the reasons set out above, the CMA assessed the impact of the Merger in the following product frames of reference:

    (a) The provision of general dental services to private patients.

    (b) The provision of specialist dental services to private patients in each of the following areas:

        (i) Orthodontics;

        (ii) Minor oral surgery;

        (iii) Prosthodontics;

        (iv) Periodontics;

        (v) Endodontics;

        (vi) Restorative dentistry; and

        (vii) Implants.

41. However, it was not necessary for the CMA to reach a conclusion on the product frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Geographic scope

42. In previous cases,[7] the CMA and its predecessors identified that the relevant geographic frame of reference for dental services is local. As a starting point for analysis, the approach has been to determine catchment areas by calculating the area within which 80% of patients access a practice (from their home postcodes), based on a sample of practices.

43. In the present case, given that that each of the Parties operates a chain of dental practices in the UK and some factors of competition might be determined at a national level and applied uniformly across practices (eg

[7] See footnote to paragraph 30.

innovation, quality standards, pricing), the CMA also assessed the impact of the Merger on competition at a national level.

44. At a UK-wide level, the provision of private dental services is highly fragmented. The Parties' internal documents estimate that [80-90]% of UK dental practices are independent, and the CMA found that the 9 largest corporate providers of dental services own approximately 10% of the dental practices in the UK. Bupa submitted that the vast majority of UK practices provide private services, citing a previous OFT study which found that 92% of practices did so.[8] The CMA did not have access to a more recent, reliable source for the total number of UK practices offering private services but noted that the industry reports provided by the Parties indicated that the vast majority of UK practices continue to offer private dental services.

45. Due to the limited combined presence of the Parties in the provision of private dental services in the UK, the CMA does not believe that there is a realistic prospect of an SLC in the supply of general or specialist dental services to private patients in the UK at a national level.

Local geographic frame of reference

46. Bupa submitted that the catchment areas established in previous cases should apply in this case on the basis that dentistry is not a dynamic nor an innovative market, and there is no reason why different catchment areas should be appropriate. Bupa therefore provided data on the basis of the geographic radii established in two previous cases, *Oasis/Smiles* and *IDH/ADP*:[9]

    (a) General dental services:

        (i) 2.5 mile radius within the M25;

        (ii) 5 mile / 8 mile radius in urban areas;

        (iii) 8 mile / 13 mile radius in rural areas;

    (b) Orthodontics:

        (i) 7 mile / 15 mile radius in urban areas;

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[8] Dentistry, an OFT market study, May 2012.

[9] Completed acquisition by Oasis Dental Care (Central) Limited of JDH Holdings Limited, decision dated 28 July 2014, and Completed joint venture between the Carlyle Group and Palamon Capital Partners LP for the acquisition of Integrated Dental Holdings Group and Associated Dental Practices, decision dated 10 June 2011.

(c) Other specialist treatments:

(i) 23 mile radius in urban areas.

47. Consistent with the approach taken in previous cases, the CMA assessed the Parties' 80% catchment areas for a sample of both Oasis' and Bupa's practices to test the appropriateness of the precedent radii.

General dental services

48. The CMA found that the Parties' 80% catchment areas for general dentistry tended to lie within the range of distances covered by the precedent radii.

49. However, the catchment areas for several Bupa practices were wider than the precedents so, in order to ensure that all relevant overlaps between the Parties were captured for the purposes of its assessment, the CMA also conducted an overlap analysis on the basis of 13-mile geographic radii around Bupa's sites both within the M25 and in other urban areas.

Specialist dental services

50. The CMA found that a cautious approach was necessary in relation to specialist services as the Parties' catchment areas varied significantly. The CMA found that a catchment area of 23 miles, as used in previous cases for non-orthodontic specialist services, was not appropriate for many of the Parties' practices where customers were attracted from a much smaller area. The CMA therefore used catchment areas of both 7 miles and 23 miles for the purposes of its assessment.

Conclusion on geographic scope

51. For the reasons explained above, the CMA found it appropriate to assess the impact of the Merger in the following geographic frames of reference:

(a) General dental services within the following catchment areas around each of the Parties' practices:

(i) 2.5 miles, and 13 miles for Bupa sites, within the M25;

(ii) 5 miles and 8 miles, and 13 miles for Bupa sites, in urban areas;

(iii) 8 miles and 13 miles in rural areas;

(b) Specialist dental services (including orthodontics):

(i) 7 miles and 23 miles.

52. However, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Conclusion on frame of reference

53. For the reasons set out above, the CMA assessed the impact of the Merger in the following frames of reference:

    (a) The provision of general dental services to private patients within the following catchment areas around each of the Parties' practices:

    - 2.5 miles, and 13 miles for Bupa sites, within the M25;
    - 5 miles and 8 miles, and 13 miles for Bupa sites, in urban areas;
    - 8 miles and 13 miles in rural areas;

    (b) The provision of specialist dental services (orthodontics, minor oral surgery, prosthodontics, periodontics, endodontics, restorative dentistry and implants, each a separate frame of reference) to private patients within a 7 mile and 23 mile catchment area around each of the Parties' practices.

54. However, it was not necessary for the CMA to reach a conclusion on the precise scope of either the product frame of reference or the geographic frame of reference since, as set out below, no competition concerns arise on any plausible basis.

Competitive assessment

Horizontal unilateral effects

55. 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]

56. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the provision of general or specialist dental services to private patients in any local area in the UK.

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10 *Merger Assessment Guidelines*, from paragraph 5.4.1.

General dental services – competition in local areas

57. Using the catchment areas specified in paragraph 51, Bupa provided the CMA with a list of local areas where both the Parties provide general dental services.

58. Bupa then applied a 6 to 5 fascia count as a filter and submitted that the Merger did not result in a reduction in fascia of 6 to 5 or fewer in any of these overlap areas.

59. The CMA had a number of reservations regarding Bupa's local overlap analysis. In particular:

    (a) The analysis did not account for the possible common ownership of practices (each practice location was assumed to be an independent competitor);

    (b) The analysis did not take into account the combined number of practices operated by the Parties;

    (c) The analysis did not take into account other parameters of competition, in particular the size and capacity of practices; and

    (d) The extent to which the Parties' practices were competing with the fascia identified in the overlap areas was unclear.

60. The CMA used data from the Parties' competitors to address the issue of the common ownership of fascia.

61. The CMA also found that the Parties' combined share of practices and share of dentists were significant in some of the overlap areas, including areas in which more than 5 fascia would remain after the Merger.

62. In light of this further evidence, the CMA believed it appropriate in this case to apply a particularly conservative filter to the list of local overlap areas in order to identify those for specific analysis. The CMA used as filters an 11 to 10 (or worse) fascia reduction or a combined share of practices higher than 35%.

63. Bupa then undertook further analysis, which showed that no area had a fascia count reduction of 28 to 27 or fewer, or a combined share of practices higher than 15%. This evidence indicated that the Parties did not have a large share of supply of general dental services to private patients in any local area of the UK.

64. The CMA noted that, on average, there were more dentists at the Parties' practices than at their competitor's practices and therefore considered

whether a fascia count analysis might underestimate the constraint imposed by the Parties on each other at a local level. The CMA found that in two of the overlap areas, Bristol and Bolton, the Parties had a combined share of dentists higher than [30-40]%. However, the CMA found that in Bristol the increment was small, relating to one dentist and, moreover, the Bupa site in Bristol was closing (unrelated to the Merger), and in Bolton the post-Merger fascia count was sufficiently high to rule out any possible competition concerns.

65. The CMA also considered whether independent practices might exert a relatively weak constraint on the Parties compared with the Parties' 'corporate' competitors. This could also make a fascia count analysis less reliable. However, the Parties' internal documents and the industry reports provided by the Parties showed consistently that convenience of location is the key driver for patients in their choice of practice and not whether a dental practice is part of a corporate chain. A survey conducted on behalf of Oasis also found that location was the most important factor for customers when choosing a dentist, and that relocation was the reason for the majority of patient switching.

66. The Parties' competitors also told the CMA that convenience of location was a key, or the most important, customer consideration.

67. Overall, the CMA found little evidence to indicate that independent practices exert a weaker competitive constraint on the Parties than their corporate competitors.

Conclusion - general dental services

68. On the basis of the evidence set out above, the CMA does not believe that there is a realistic prospect that the Merger will lead to an SLC in the provision of general dental services to private patients in any local area in the UK.

Specialist dental services – competition in local areas

69. Using the catchment areas specified in paragraph 51, Bupa provided the CMA with a list of local areas where both the Parties provide specialist dental services.

70. The concerns identified above in relation to the Parties' data on general dentistry (see paragraph 59) applied also to specialist dentistry, but were compounded by the CMA having limited evidence explaining how competition for specialist treatments works in practice. For this reason, the CMA believed it appropriate in this case to apply an even more conservative filter to the

Parties' list of local overlap areas for specialist services than was applied to the overlaps for general dental services. The CMA used as filters a 15 to 14 (or worse) fascia reduction or a combined share of practices higher than 30%.

71. Bupa conducted further analysis to apply these filters and found that there were two areas which failed the fascia count filter (relating to the provision of specialist periodontics services in Reading and Solihull). No areas failed on the basis of share of practices.

72. The CMA investigated more closely the provision of specialist periodontics services in Reading and Solihull and found that:

(a) In Reading, the Parties' combined share of practices was low ([10-20]%), and the Parties' practices were located at the edge of their respective catchment areas, with six competing practices located between them. This suggested that the Parties were not close competitors and there would be sufficient competition remaining in the area post-Merger.

(b) In Solihull, although the Bupa and Oasis practices were geographically close to each other, they faced respectively [10-20] and [5-10] competing fascia (excluding each other) within their individual 80% catchment areas, which indicated that there would be sufficient competition remaining in the area post-Merger. This was confirmed by the Parties' local competitors, which told the CMA that, in addition, there were other practices or hospitals (eg Birmingham Dental Hospital) to which patients could be referred for specialist periodontics treatments.

Conclusion - specialist dental services

73. On the basis of the evidence set out above, the CMA does not believe that there is a realistic prospect that the Merger will lead to an SLC in the provision of specialist dental services to private patients in any local area in the UK.

Conclusion on horizontal unilateral effects

74. As set out above, and on the basis of the evidence available, the CMA found 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 provision of general or specialist dental services to private patients in any local area in the UK.

Vertical effects

75. Vertical effects may arise when a merger involves firms at different levels of the supply chain.

76. Vertical mergers may be competitively benign or even efficiency-enhancing but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.[11]

77. In the present case, there is a vertical relationship between the Parties due to the connection between the dental services supplied by Oasis and the dental insurance products supplied by Bupa. Bupa submitted that dental services represent an 'indirect input' into the production of dental insurance products because, in contrast to medical insurance products, dental insurance producers do not generally purchase services directly from dental services providers. Instead, dental insurers typically reimburse patients after they have paid for their treatments with the patient choosing their dentist.

78. The CMA's approach to assessing vertical theories of harm is to analyse: (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.[12]

79. In this case, the CMA considered whether as a result of the Merger the Parties would have the ability and incentive to harm rival suppliers of dental services or dental funding products.

80. Bupa submitted that the Parties would not have the ability or the incentive to engage in input or customer foreclosure, for the following reasons:

    (a) Bupa does not have a significant degree of market power in the supply of dental insurance products, accounting for about [20-30]% of UK dental insurance;

    (b) A central element of the business model for Bupa insurance is to offer convenient access to dentists and a choice between dentists. Therefore, any attempt to foreclose other dental practices by requiring Bupa insurance customers to use a dentist of the merged entity would cause Bupa to degrade its insurance offer significantly;

    (c) The merged entity will have a very small share of supply in dental services, controlling just 400 ([0-5]%) of the [10,000-15,000] dental practices in England, the vast majority of which offer private services; and

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11 In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

12 *Merger Assessment Guidelines*, paragraph 5.6.6.

(d) Insurance is not a significant route to market for dental service providers. An industry report provided by the Parties estimated that only 2% of UK private dental spending is derived from dental insurance claims. Moreover, dental service providers cannot identify patients funded by insurers (unless they disclose their insurance cover) such that any foreclosure strategy would fall primarily on self-funded patients and the costs of foreclosure would vastly outweigh any potential benefits.

81. The CMA believes that the Parties would not have the ability to foreclose other suppliers of dental services by discouraging its insured customers from using their practices. Only a very low proportion of private patients have dental insurance, and Bupa supplies the insurance to only around [20-30]% of these patients. The CMA also acknowledges that any such strategy would degrade Bupa's insurance product, undermining its ability to compete with other dental insurers.

82. The CMA also believes that Bupa would not have the ability to foreclose other insurers (or other providers of dental funding products) from access to dental services. The Parties' practices are not an important route to market for rivals, either nationally, as shown in the Parties' low combined share of supply, or locally, as shown from the CMA's findings in relation to horizontal effects.

83. Given the CMA's conclusions that the Merger will not provide Bupa with the ability to foreclose its competitors, the CMA has not assessed the impact of the Merger on Bupa's incentive to foreclose or the effect of a foreclosure strategy on competition.

Conclusion on vertical effects

84. As set out above, the CMA does not believe that, as a result of the Merger, the Parties would have the ability to harm rival suppliers of dental services or dental funding products. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects.

Barriers to entry and expansion

85. The CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

86. As indicated above, the CMA contacted the Parties' competitors and relevant NHS commissioning entities as part of its investigation.

87. One provider of dental payment plans and dental insurance in the UK raised concerns about the Merger. The concern highlighted the option of 'direct settlement', which would involve the insurance provider reimbursing the dental practice directly. The provider suggested that the Merger could place Bupa at an advantage against its insurance competitors by it being able to offer this service where its customers used its dental practices. However, as explained above, the CMA found that the Parties' combined share of supply in dental practices is very low and the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects.

88. No customers or other third parties raised concerns about the Merger.

89. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

90. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the UK.

91. The Merger will therefore **not be referred** under section 22(1) of the Act.

Andrew Wright
Director
Competition and Markets Authority
16 March 2017