Completed acquisition by SSCP Spring Topco Limited of Acorn Care and Education Group

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/6640/16

Introduction

1. On 3 August 2016, SSCP Spring Topco Limited (**SSCP Spring**), acting through its subsidiary SSCP Spring Bidco Limited (**SSCP Bidco**), a holding company of the National Fostering Agency Group (**NFA**), acquired the entire issued share capital of Acorn Care 1 Limited and its subsidiaries (**Acorn**) (the **Merger**). NFA and Acorn are together referred to as the **Parties**.

2. On 30 January 2017, 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[1] 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**). The text of the SLC Decision is available on the CMA webpages.[2]

3. On 6 February 2017, the Parties offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.

4. On 13 February 2017, the CMA gave notice to SSCP Spring, pursuant to section 73A(2)(b) of the Act, that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of

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[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.

[2] See: https://assets.publishing.service.gov.uk/media/58aaf81440f0b67ec500002b/nfa-acorn-uils-decision-in-principle.pdf.

them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the Parties' offer (the **UIL Provisional Acceptance Decision**).

The undertakings offered

5. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to the supply of fostering placement services by independent fostering agencies (**IFAs**) to Local Authorities (**LAs**) at the framework level with respect to the All Wales framework, the framework agreement area comprising Luton, Central Bedfordshire and Bedford (the **Luton framework**) and the Norfolk framework. In particular, the SLC Decision noted that:

   (a) The fostering placement services sector is characterised by significant capacity constraints, and the scale of an IFA's existing carer network is likely to be a strong indicator of its competitive strength within a particular framework;

   (b) In each of the All Wales, Luton and Norfolk frameworks, the Parties would have a strong market position post-Merger;

   (c) The remaining fringe of IFAs on each of these frameworks would not be sufficient to constrain the Parties post-Merger. In each case, the market position of the remaining IFAs is considerably smaller than the merged entity and, in light of the capacity constraints that characterise the sector and limited evidence of recent expansion, these IFAs may be unable to expand their capacity sufficiently to constrain the Parties; and

   (d) There is no realistic prospect that LA in-house provision would be able to expand to the extent necessary.

Divestment Businesses

6. As set out in the UIL Provisional Acceptance Decision[3], to address the SLC identified by the CMA SSCP Spring has offered undertakings to divest three Acorn businesses respectively serving the relevant frameworks where the CMA found a realistic prospect of an SLC. The text of the undertakings (the **Proposed Undertakings**) is available on the CMA webpages.[4] The Proposed Undertakings comprise:

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[3] See https://assets.publishing.service.gov.uk/media/58aaf81440f0b67ec500002b/nfa-acorn-uils-decision-in-principle.pdf

[4] See http://www.gov.uk/cma-cases/national-fostering-agency-acorn-care-1-merger-inquiry#undertakings-in-lieu-of-reference-consultation

(a) The divestment of Acorn's Pathway Care Limited (**PCL**) business (including all relevant carer capacity and any related employees and assets that may be required by a purchaser), a stand-alone business that is currently active on the Wales framework (the **Wales Divestment Business**);

(b) The divestment of Acorn's business (including all relevant carer capacity and any related employees and assets that may be required by a purchaser) in relation to the Norfolk framework (the **Norfolk Divestment Business**); and

(c) The divestment of Acorn's business (including all relevant carer capacity and any related employees and assets that may be required by a purchaser) in relation to the Luton framework (the **Luton Divestment Business** and, together with the Wales Divestment Business and the Norfolk Divestment Business, the **Divestment Businesses**).

7. The relevant carer capacity to be transferred should (with the other assets transferred) enable the purchaser to replicate the competitive constraint which would have been imposed by Acorn absent the Merger in the relevant framework agreement area. Based on the CMA's SLC Decision, this should comprise carers who are available to serve the relevant framework based on their location or placement circumstances.

8. For the Wales Divestment Business, the relevant carer capacity comprises all the carers who are registered with PCL. However, the Norfolk and Luton Divestment Businesses are part of larger Acorn businesses with significant operations outside of the frameworks at issue. Therefore, for these businesses under the Proposed Undertakings, the relevant carers comprise Acorn carers who, at the time of the CMA's SLC decision:

(a) have a placement or placements with the Luton or Norfolk Framework;

(b) are resident in Luton or Norfolk framework agreement area but have no placements at all;

(c) are resident in the Luton or Norfolk Framework area and have a placement or placements outside that framework area, but may be available for placements on the Luton or Norfolk Framework in the near future.

9. Carer transfer with the Divestment Businesses is subject to carer consent. Therefore, carers can opt out of transferring. Depending on the circumstances for any refusal, under the Proposed Undertakings the CMA will consider

whether it is necessary, for the purposes of preserving the effectiveness of the Undertakings, for SSCP Spring to ask alternative NFA carers who could serve the Luton or Norfolk Frameworks to transfer to the Divestment Business.

10. Any other Acorn carers who do not fall into any of the categories described in paragraph 8 are also able to transfer as part of the Norfolk or Luton Divestment Businesses if they express a preference to do so.

11. SSCP Spring has offered to use all reasonable endeavours to gain in principle acceptance from relevant carers before the CMA finally accepts the Proposed Undertakings.

Upfront buyers

12. SSCP Spring has also offered to enter into an agreement for the sale and purchase of the Divestment Businesses with an upfront buyer, before the CMA finally accepts the Proposed Undertakings. SSCP Spring has proposed BSN Social Care Limited (**BSN**) and Partnerships in Children's Services Limited (**PICS**), which is ultimately owned by Sovereign Capital Limited (**Sovereign**), as the potential upfront buyers for the Luton Divestment Business and Norfolk Divestment business. SSCP Spring has proposed BSN and Bridges Evergreen Holdings Limited which is a holding company controlled by Bridges Evergreen Capital GP LLP in its capacity as General Partner of Bridges Evergreen Capital Limited Partnership (collectively, **Evergreen**) and part of the wider Bridges Fund Management firm (**Bridges**) as the potential upfront buyers for the Wales Divestment Business. BSN, PICS and Bridges are together referred to as the **Proposed Purchasers**. This agreement will be conditional on acceptance by the CMA of the Proposed Undertakings.

CMA assessment

13. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.[5]

[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).

14. The CMA believes that the Proposed Undertakings are effective to resolve the CMA's SLC concerns as the transfer of the carer capacity provided by the Divestment Businesses restores competition in relation to the supply of fostering placement services to the level that would have prevailed absent the Merger within each of the three framework areas.

15. The CMA also believes that the Proposed Undertakings would be capable of ready implementation, because:

(a) The Divestment Businesses are viable businesses, comprising all relevant carers, staff and assets. In this context, SSCP Spring has appointed an independent monitoring trustee to monitor the viability of the Divestment Businesses, including in relation to carer engagement and willingness to transfer. The input received from the monitoring trustee and the Parties to date supports the CMA's views on viability of the business; and

(b) As discussed in further detail below, the CMA believes that the Proposed Purchasers have the expertise and infrastructure to support such a transfer.

Suitability of the proposed purchasers

16. 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 proposed 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 is 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.[6]

BSN

17. BSN provides fostering services under the Nexus Fostering (**Nexus**) and Blue Sky Fostering (**Blue Sky**) IFA brands. Nexus is active in East Anglia, the East and West midlands, along the M4 corridor and in London. Blue Sky is active in the whole of the South of England and in the South West of England.

18. The CMA believes that the acquisition by BSN of the Divestment Businesses would remedy, mitigate or prevent the SLC concerned and any adverse effect resulting from it.

19. BSN has the necessary expertise, incentive and intention to operate the Divestment Businesses as an effective competitor. BSN's management team has significant experience in the fostering sector and has past experience of acquiring and integrating other fostering businesses. In particular, BSN already has local teams operating in the same areas as the Norfolk and Luton Divestment Businesses and the Senior Nexus team already have a well-established and well-resourced support service available who will be able to provide all required services to the transferred carers and staff teams. BSN has also submitted clear and credible proposals setting out how it intends to continue to support, develop and grow the Divestment businesses alongside its existing operations.

20. In terms of financial resources, the evidence available to the CMA indicates that BSN has the necessary financial resources to acquire and operate the Divestment Businesses as a viable and active competitor. In the financial year ending 31 March 2016 Blue Sky achieved a UK wide turnover of approximately £[✂] million and Nexus achieved a UK wide turnover of approximately £[✂] million. In addition, BSN has provided evidence that it can fund the acquisition [✂].

21. In terms of independence, BSN told the CMA that it does not have any material influence over the Parties and that no entity or individual within BSN holds or benefits from any current commercial arrangement or has any significant structural link with either of the Parties.

22. With regard to consents and approvals, the key consents required are from foster carers and LAs consenting to the transfer of carers and children in their care. On the evidence available to date, in particular, the evidence indicating

[6] *OFT1122*, paragraphs 5.25–5.30.

that BSN will be able to offer sufficient support to foster carers transferring with the relevant businesses, BSN can reasonably be expected to obtain the necessary consents.

23. The CMA is confident that BSN's acquisition of any of the Divestment Businesses would not, in itself, create a realistic prospect of an SLC within any market or markets in the UK. BSN does not currently operate in Wales in any capacity. Although BSN also provides fostering services in the Norfolk and Luton Framework areas, the evidence available to the CMA indicates that BSN is not a substantial constraint on the Norfolk and/or Luton Divestment Business at this time based on their carer and placement numbers. As noted above, the acquisition will allow BSN to replicate the constraint currently provided by Acorn and compete more effectively with NFA in these areas.

<u>PICS</u>

24. PICS is the parent of a group of four IFAs; Fosterplus, ISP, Orange Grove and Clifford House Fostering, active in Fostering Placement Services. The group serves a wide range of LA customers across the UK, including the Norfolk and Luton Framework Areas.

25. The CMA believes that the acquisition by PICS of the Luton Divestment Business and Norfolk Divestment Business would remedy, mitigate or prevent the SLC concerned and any adverse effect resulting from it.

26. PICS has the necessary expertise, incentive and intention to operate the Norfolk and/or Luton Divestment Businesses as an effective competitor. PICS' management team has significant experience in the fostering sector, including past experience of acquiring and integrating other fostering businesses. In particular, PICS already has local teams operating in the same areas as the Norfolk and Luton Divestment Businesses and already has a well-established and well-resourced support service available who will be able to provide all required services to the transferred carers and staff teams. PICS has submitted clear and credible proposals setting out how it intends to continue to develop and grow the Luton and/or Norfolk Divestment businesses alongside its existing operations.

27. In terms of financial resources, the evidence available to the CMA indicates that PICS has the necessary financial resources to acquire and operate either or both of the Luton Divestment Business and Norfolk Divestment Business as a viable and active competitor. In the financial year ending 31 March 2015 PICS achieved a UK wide turnover of approximately £[✄] million. In addition, PICS has indicated it will be able to fund the acquisition from [✄].

28. In terms of independence, although Sovereign held NFA as part of its portfolio from 2006 to early 2012, there have been no structural links between Sovereign and NFA since 2012. In particular, PICS told the CMA that it does not have any material influence over the Parties and that no entity or individual within PICS holds or benefits from any current commercial arrangement or has any significant structural link with either of the Parties.

29. On the evidence available to date, in particular, the evidence indicating that PICS will be able to offer sufficient support to foster carers transferring with the relevant businesses, PICS can reasonably be expected to obtain the necessary consents.

30. The CMA is confident that PICS' acquisition of either or both of the Norfolk Divestment Business and Luton Divestment Business would not, in itself, create a realistic prospect of an SLC within any market or markets in the UK. Although PICS also provides fostering services in the Norfolk and Luton Framework areas, the evidence available to the CMA indicates that BSN is not a substantial constraint on the Norfolk and/or Luton Divestment Business at this time based on their carer and placement numbers. The acquisition will allow PICS to replicate Acorn's constraint and compete more effectively with NFA in these areas.

<u>Bridges</u>

31. Bridges regards itself as a 'thematic-investor' and states that it proactively targets sectors and companies such as PCL where creating societal or environmental value can also drive financial return. Bridges invests in solutions to pressing community challenges via four strategies: Social Business (including Health and Wellbeing, into which PCL would sit), Growth Business, Property and Outcomes Contracts. Bridges is already active in the provision of children's care, education and therapy services through its investment in the New Reflexions business. New Reflexions operates 17 children's care homes, four 'rapid response' services and one special school across England, Wales, and Scotland supporting the most vulnerable and complex children. Bridges has also financed three social impact bonds providing "at risk" working capital to help two providers deliver fostering and related services under three contracts.

32. The CMA believes that the acquisition by Bridges of the Wales Divestment Business would remedy, mitigate or prevent the SLC concerned and any adverse effect resulting from it.

33. Bridges, as a whole, and Evergreen in particular, has the necessary expertise, incentive and intention to operate the Wales Divestment Businesses as an

effective competitor. Bridges has experience in the regulated social care sector, including interacting with and obtaining the confidence of government and regulatory bodies such as LAs and Ofsted. Bridges further submitted clear and credible proposals on how it intends to support, develop and grow the Wales Divestment Business.

34. In terms of financial resources, the evidence available to the CMA indicates that Bridges has the necessary financial resources to acquire and operate the Wales Divestment Business as a viable and active competitor. Since its inception in 2002, Bridges has raised hundreds of millions of pounds for sustainable and impact investment and currently has over £[✄] of funds under management. Given the strong backing from Bridges and its own previous commercial success in social-care investments, Evergreen has considerable flexibility in making social investments, and has a published policy that it is able of offer up to £10 million of long-term (10+ years with no fixed exit timetable) capital to invest in suitable social enterprises. In addition, Evergreen submitted that all financing for the acquisition will [✄].

35. In terms of independence, [✄]. Therefore, the CMA believes that Bridges, Evergreen and all of their portfolio companies are independent of and unconnected to the Parties.

36. On the evidence available to date, in particular, the evidence indicating that Bridges has experience liaising with LAs in relation to social care and will be able to offer sufficient support to the Wales Divestment Business, Bridges can reasonably be expected to obtain the necessary consents. In particular, Bridges told the CMA that it will hire Finance, IT, HR, Brand/Marketing and Training support in order to operate the Wales Divestment Business and that its intention is to rebuild a self-standing team for the Wales Divestment Business within the first six months of transaction completion.

37. The CMA is confident that Bridge's acquisition of the Wales Divestment Business would not, in itself, create a realistic prospect of an SLC within any market or markets in the UK, as Bridges does not currently provide fostering services in the Wales Framework area.[7]

38. Therefore, subject to responses to this consultation, the CMA currently considers BSN and PICS to be to be suitable purchasers of the Luton Divestment Business and Norfolk Divestment Business and BSN and Bridges to be suitable purchasers of the Wales Divestment Business.

[7] *OFT1122*, paragraphs 5.25–5.30.

Proposed decision and next steps

39. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Luton Divestment Business and/or Norfolk Divestment Business by BSN or PICS and the purchase of the Wales Divestment Business by BSN or Bridges is, in the circumstances of this case, 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.

40. 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 Undertakings is available on the CMA web pages.[8]

41. 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.[9]

42. Representations should be made in writing to the CMA and be addressed to:

Daniella Sinobad
Mergers Group
Competition and Markets Authority
Victoria House
37 Southampton Row
London
WC1B 4AD

Email: Daniella.Sinobad@cma.gsi.gov.uk
Telephone: 020 3738 6983

Deadline for comments: 24 May 2017

[8] See http://www.gov.uk/cma-cases/national-fostering-agency-acorn-care-1-merger-inquiry#undertakings-in-lieu-of-reference-consultation
[9] Under paragraph 2(4) of Schedule 10 to the Act.