

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

Decision on acceptance of undertakings in lieu of reference

ME/6640/16

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 9 June 2017. Full text of the decision published on 9 June 2017.

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 Group¹ (**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 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**).
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. The CMA gave notice to SSCP Spring on 13 February 2017, 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 the Parties' offer (the **UILs Provisional Acceptance Decision**).

¹ The National Fostering Agency Group comprises Belton Associates (Group Holdings) Limited (Company 07875698) and all its subsidiaries.

4. The text of the SLC Decision and the UILs Provisional Acceptance Decision are available on the CMA webpages.²

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.
6. As set out in the UIL Provisional Acceptance Decision SSCP Spring has offered to divest three Acorn businesses respectively serving the relevant frameworks where the CMA found a realistic prospect of an SLC, (the **Divestment Businesses**), as set out in more detail in the text of the consultation in Annex 1 below (the **UILs**). The UILs comprise:
 - (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**);

² See the [case page](#).

- (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, the relevant carer capacity comprises 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 UILs, 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 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 UILs. SSCP Spring has proposed BSN Social Care Limited (**BSN**) as the upfront buyer.

Consultation

12. On 9 May 2017, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the UILs, inviting interested parties to give their views on the UILs. The relevant text from the consultation is set out at Annex 1 of this decision.³ For the reasons set out in the consultation, the CMA's preliminary view was that the UILs would resolve the SLC 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.⁴
13. The CMA received three submissions during the consultation period. The third parties who submitted views expressed no concerns with respect to either the prospective purchasers or the Proposed Undertakings. One third party noted that a divestment to BSN would increase BSN's market presence in Norfolk and suggested that this might therefore give rise to competition concerns. This is not, however, supported by the evidence available to the CMA which indicates (as set out in the consultation document) that BSN is not a substantial constraint on the Norfolk Divestment Business at this time (taking into account, in particular, its current carer and placement numbers). Accordingly, these third party submissions did not cause the CMA to change its preliminary view that the UILs would be acceptable.
14. The CMA therefore considers that the UILs offered by SSCP Spring are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and that BSN is a suitable purchaser of the Divestment Businesses.

³ The full consultation text was published on the [case page](#).

⁴ *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).

Decision

15. For the reasons set out above, the CMA considers that the UILs provided by SSCP Spring are as comprehensive a solution as is reasonable and practicable and 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 SSCP Spring pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
16. The UILs, which have been signed by SSCP Spring and will be published on the CMA webpages,⁵ will come into effect from the date of this decision.

Rachel Merelie
Acting Executive Director, Markets & Mergers
Competition and Markets Authority
9 June 2017

⁵ See the [case page](#).

Annex 1

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 Act⁶

⁶ See the [case page](#) for full text of Notice.