CMA
Competition & Markets Authority

Completed acquisition by Cygnet Health Care Limited and Universal Health Services, Inc of Care Aspirations Developments Limited, Cambian Healthcare Limited and Cambian Care Services Limited

Decision on relevant merger situation and substantial lessening of competition

Please note that [✂] indicates figures or text which has been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality or to protect an individual's interest.

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SUMMARY

1. On 28 December 2016, Cygnet Health Care Limited and Universal Health Services, Inc (**Cygnet**) acquired the Cambian Adult Services division of Cambian Group plc (**Cambian**) though its acquisition of the entire issued share capital of Care Aspirations Developments Limited, Cambian

Healthcare Limited and Cambian Care Services Limited (the **Merger**). Cygnet and Cambian are together referred to as the **Parties**.[1]

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 hospital-based inpatient rehabilitation services (**Rehabilitation Services**) to local authorities and NHS clinical commissioning groups (**CCGs**) in England, and to NHS Wales (together, referred to as **Commissioners**).[2]

4. The CMA's investigation focussed on whether horizontal unilateral effects could arise from the Merger in the provision of Rehabilitation Services due to the loss of competition at a local level. The CMA's concern was that the removal of one Party as a competitor could allow the Parties to increase prices, lower quality, reduce the range of their services and/or reduce innovation.

5. There are a limited number of credible providers of mental healthcare services to Commissioners, which could make the threat of a competitor switching from offering one specialism (or treating one patient gender), to another, more competitively significant. For this reason, and consistent with its approach at phase 1 in identifying competition concerns on a '*may be the case*' basis, the CMA has adopted a cautious approach to identifying all potential competition concerns.

6. In particular:

   (a) With regard to the product frame of reference, consistent with *Acadia/Priory*[3] (a recent case in the mental healthcare services market) the CMA has distinguished within Rehabilitation Services between particular specialisms (ie conditions treated) and by patient gender, as both genders are not routinely treated on the same ward. In this case, the CMA identified five specialisms within Rehabilitation Services where the Parties overlap, including in particular the treatment of long-term

[1] The CMA imposed an *Initial Enforcement Order* on Cygnet Health Care Limited, UK Acquisitions No. 6 Ltd and Universal Health Services Inc. in relation to the completed acquisition on 29 December 2016.
[2] The Parties are active in other service lines, which do not overlap. Unless otherwise stated, these service lines are not considered by the CMA in its competitive assessment.
[3] *Completed acquisition by Acadia Healthcare Company, Inc. of Priory Group No. 1 Limited.*

mental health conditions (**LTMH**) and the treatment of personality disorders (**PD**).[4] The CMA, recognising the potential for supply-side substitution between specialisms and between patient genders treated, also investigated whether additional concerns could arise when assessing the Merger on the basis of each specialism on a combined gender basis (ie not distinguishing by which patient gender is currently treated at that ward) and separately on the basis of all Rehabilitation Services (ie not distinguishing between specialisms or by patient gender treated).

(b) With regard to the geographic frame of reference, and again consistent with *Acadia/Priory*, the CMA found there to be strong local characteristics to competition. Commissioners of Rehabilitation Services emphasised the importance of proximity from the perspective of the patient (and their families) and consistently ranked this as a key factor in their decision on where to refer a patient. The CMA therefore established its geographic frame of reference, as a starting point, based on the catchment areas (ie the area over which a facility draws 80% of its patients) of each of the Parties' facilities where an overlap in one or other catchment area arises. It did this on the basis of both a site-specific 80% catchment area (where available), and on a treatment-average[5] catchment area (calculated across all of that Party's sites offering the treatment in question).

7. The CMA's approach to product frame of reference and geographic frame of reference is set out further at paragraphs 27 to 53 and 54 to 76.

8. The CMA then conducted an assessment of competition in each of the local areas where the Parties' 40 sites overlapped.

9. First, the CMA filtered out those local areas where the Parties' combined share of supply (by bed numbers) was not at a level that gave rise to prima facie competition concerns. The CMA did this by checking whether the Parties' combined share of supply (for each specialism, patient gender, on a combined gender and on an all Rehabilitation Services basis) at each site would be 35% or lower on the basis of that site's site-specific 80% catchment area (where available), the treatment- average catchment area and at 10 and 20 mile intervals either side of the site-specific and treatment-

[4] The Parties also overlap in the treatment of patients suffering from Autistic Spectrum Disorder and Learning Disability but concerns did not ultimately arise on these overlaps.
[5] In this decision, the average used is the mean, unless otherwise stated.

average catchment areas. Seven of the Parties' sites passed this filter and were excluded from further analysis.

10. Next, for each of the local areas remaining where the Parties had overlapping sites, the CMA assessed whether the Parties offered similar services, how close they were (geographically) to one another, evidence of pre-Merger competition between them and the extent to which there were alternative (and credible) providers remaining post-Merger. The CMA reviewed the Parties' internal documents and contacted third parties, including competitors and Commissioners in each of the relevant local areas that purchase the relevant services. As a result of this more detailed assessment the CMA found that, in the majority of cases, the Parties were not each other's closest competitors and that, post-Merger, sufficient alternative providers would remain in the relevant local area to mitigate any potential competition concerns.

11. However, the CMA believes there to be a realistic prospect of a substantial lessening of competition (**SLC**) with regard to the supply of Rehabilitation Services in the local areas surrounding eleven of the Parties' sites, in each case as a result of high combined shares of supply of the relevant services, evidence of pre-Merger competition between the Parties, limited alternative providers remaining post-Merger and concerns raised by Commissioners.

12. Consequently, the CMA believes that the Merger gives rise to an SLC as a result of horizontal unilateral effects in relation to the supply of each of the following services, when centering its analysis on each of the following sites:[6]

    (a) the supply of LTMH Rehabilitation Services to male patients in the catchment areas of Cygnet *Derby*, Cambian *Storthfields*, Cambian *The Limes*, Cambian *Sherwood* and Cambian *Oaks*;

    (b) the supply of LTMH Rehabilitation Services to female patients in the catchment areas of Cygnet *Kewstoke*, Cambian *Raglan House* and Cambian *St Teilo*; and

[6] For each of the Cygnet and Cambian sites listed, as explained further in the competitive assessment below, there may be one or more sites of the other Party which contribute to the increment giving rise to the SLC centred on the listed site, which are not contained within this list. For example, for the SLC centred on Cygnet *Derby*, each of Cambian *Storthfields*, Cambian *The Limes*, Cambian *Sherwood* and Cambian *Sedgley* contribute to the increment which gives rise to the SLC finding. The CMA has then also found independent SLCs when centring on three of these four Cambian sites. However, the CMA has not found an independent SLC when the assessment is centred on the fifth Cambian site, Cambian *Sedgley*, and Cambian *Sedgley* is therefore not listed in this paragraph.

(c) the supply of PD Rehabilitation Services to female patients in the catchment areas of Cygnet *Kewstoke*, Cambian *Aspen*, Cambian *Acer* and Cambian *Alders*.

13. The CMA does not believe that countervailing buyer power or potential entry or expansion would mitigate the competition concerns identified.

14. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). The Parties have until 28 April 2017 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

15. Universal Health Services, Inc (**UHS**) is a US healthcare management company listed on the New York Stock Exchange, which owns Cygnet Health Care Limited, a company incorporated in England and Wales. UHS operates, through its subsidiaries, acute care hospitals, behavioural health facilities and ambulatory centres in the US, UK, Puerto Rico and the US Virgin Islands. In 2012 UHS acquired Cygnet, which operates 19 mental health hospitals and two residential nursing homes for the elderly across the UK. Cygnet provides a range of services for individuals suffering from a variety of mental health conditions at different stages of the mental health care pathway.

16. The worldwide turnover for UHS in the year ending 31 December 2015 was around £5,908 million and its turnover in the UK was around £132.8 million.

17. Cambian Group plc is a UK-based provider of specialist behavioural health services for children and for adults (the latter provided by Cambian) in the UK. It is listed on the London Stock Exchange. Cambian's services include providing specialist mental health and rehabilitation services, and residential care home services for patients with mental health conditions.

18. The turnover of Cambian in its last reported financial year (the calendar year 2015) was £121 million in the UK.

Transaction

19. The Merger relates to the purchase, pursuant to a sale and purchase agreement dated 5 December 2016, by Cygnet of the entire issued share

capital of Care Aspirations Developments Limited, Cambian Healthcare Limited and Cambian Care Services Limited, which completed on 28 December 2016.

20. The Merger is not subject to review by any other jurisdiction.

Jurisdiction

21. As a result of the Merger, the enterprises of Cygnet and Cambian have ceased to be distinct. The UK turnover of Cambian exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied. The Merger completed on 28 December 2016 and was made public on the same day. The four month deadline for a decision under section 24 of the Act is 28 April 2017. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

22. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 22 February 2017 and the statutory 40 working day deadline for a decision is therefore 21 April 2017. The Merger was considered at a Case Review Meeting.[7]

Counterfactual

23. 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 than these conditions.[8]

24. In this case, the CMA, consistent with the views submitted by the Parties, believes the pre-Merger conditions of competition to be the relevant counterfactual.

25. The Parties have provided information regarding new facilities opening in the next 12 months and planned expansions to existing facilities during that

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[7] See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, from paragraph 7.34.
[8] *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).

period. The CMA also received evidence in its market testing of a small number of third party facilities which are planned to open in the next 12 months. All such developments have been taken into account, to the extent they are relevant, in the CMA's competitive assessment.

Analytical framework

Frame of reference

26. 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.[9]

Product scope

27. The CMA has taken its approach in *Acadia/Priory* (which also related to a merger in the supply of Rehabilitation Services in the UK, amongst other mental healthcare services),[10] as a starting point, and explored any reasons to depart from that approach in this case.

28. In particular, the CMA assessed each of the following in establishing the appropriate product frame of reference:

    a) delineation by specialism (ie patient condition being treated);

    b) delineation by whether male or female patients are being treated (ie by patient gender);

    c) aggregation of separate frames of reference on the basis of supply-side substitution; and

    d) whether a distinction between the supply of these services by NHS hospitals and independent (ie private) providers is appropriate.

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[9] *Merger Assessment Guidelines*, paragraph 5.2.2.
[10] *Acadia/Priory*.

29. The Parties overlap in the supply of Rehabilitation Services to Commissioners. Most mental healthcare hospitals are divided into discrete specialised units. In Rehabilitation Services, Cambian has 30 specialised units (across 25 sites),[11] and Cygnet has 19 specialised units (across 15 sites). Where a site has more than one unit, and offers different specialisms at each of those units, a separate competitive assessment was carried out at a unit-level for each of the specialisms offered.

Delineation by specialism (ie patient condition being treated)

30. In *Acadia/Priory*, the CMA established each specialism within Rehabilitation Services as a distinct frame of reference, on the basis that treatment of different patient conditions within Rehabilitation Services takes place at dedicated wards and patients with one condition would not usually be sent to a ward which specialises in the treatment of a different condition.

31. The CMA's investigation in this case was consistent with those findings.[12] The Parties each treat a number of distinct patient conditions and overlap in the supply of Rehabilitation Services to patients with autistic spectrum disorders (**ASD**), learning difficulties (**LD**), LTMH and PD. The CMA treats each of these specialisms as a distinct product frame of reference.

32. The Parties also provide LTMH services specifically to elderly patients (**LTMH E**) and submitted that this should be considered as a separate frame of reference (distinct from LTMH services for other adults), given that:

    (a) there are specialised facilities that provide treatment relating to mental health conditions associated with old age; and

    (b) there are significant demand-side differences, in practice, between elderly and adult services: for example, less than [0-5]% of patients in adult LTMH facilities are 65+, and the average age at LTMH E sites is typically well above 65+ (at [✂] years), with all patients having mental health conditions relating to old age.

33. The evidence received in the CMA's investigation was consistent with the Parties' submissions; in particular, that specialised facilities are generally

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[11] The CMA treats Cambian *Grange* and Cambian *Lodge* as a single unit, despite being in separate locations, as both offer ABI services for male patients at just a 0.4 mile distance to one another.
[12] We understand there may be limited exceptions to this – for example Cygnet currently has [✂] younger patients in its LTMH elderly facilities (representing [0-5]% of its [✂] LTMH patients who are over the age of 65): Parties' submissions.

required and there is a clear delineation in the age of the patient population between sites designated as LTMH and those designated as LTMH E.

34. The CMA has therefore treated LTMH E as a distinct frame of reference.[13] However, it has also on a cautious basis aggregated this specialism with other specialisms within Rehabilitation Services to identify whether the Merger could give rise to additional concerns on a broader basis.

Delineation by patient gender

35. In *Acadia/Priory*, the CMA distinguished between the supply of Rehabilitation Services for patients of different genders on the basis that, from a demand-side perspective, mixed wards did not represent an alternative for all patients and that in most cases patients of one gender would not be sent to wards treating the other gender. The CMA also noted that the Care Quality Commission (**CQC**) has mandated that wards should be single sex for the 'dignity and respect' of the patients.

36. The CMA's investigation in this case confirmed these findings and therefore the CMA has assessed the Parties' activities on the basis of distinct frames of reference for male and female patients.

37. In calculating shares of supply, if a competitor site provides treatment for both male and female patients (i.e. a mixed ward), the CMA has sought to verify with the site owner the actual number of beds dedicated to each gender. Where information was not available to the CMA, the calculations assume (on the basis of the CMA's best estimate of market practice, consistent with the CMA's approach in *Acadia/Priory*)[14] that 65% of beds are used for the treatment of male patients and 35% of beds are used for the treatment of female patients.

Aggregation between specialisms and/or gender

38. In *Acadia/Priory*, the CMA considered whether an identified product frame of reference (for example, Rehabilitation Services provided to female PD patients) should be widened to take account of supply-side substitution (eg the ease with which a provider of one service could switch to supplying

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[13] The CMA has not previously assessed whether the treatment of elderly patients with LTMH conditions could constitute a separate frame of reference within LTMH services. Further, when categories of LTMH are referred to below (ie LTMH female, LTMH male and LTMH combined gender), these exclude elderly patients and, so, are separate frames of reference to treatments provided to elderly patients (ie LTMH E female, LTMH E male, LTMH E combined gender).
[14] *Acadia/Priory*, paragraph 391.

another service or the same service to the other gender). Whilst the CMA focussed its analysis in that case on narrow frames of reference, on a cautious basis and recognising the possibility of some supply-side substitution, the CMA also considered the potential impact of that merger within speciality-combined and gender-combined frames of reference.[15]

39. The Parties submitted that services for different specialisms and genders within Rehabilitation Services give rise to separate markets and that there is not sufficient supply-side substitution to aggregate them. The Parties stated that re-designation of a ward is a '*significant task and not undertaken lightly*'.[16]

40. The CMA reviewed evidence relating to the Parties' conversion of sites in the past four years, including relevant evidence in the Parties' internal documents and evidence received from third parties. This indicates there is a significant cost and time range for conversions. The Parties submitted that they each had carried out two gender or specialism conversions (both intended to address unsatisfied demand for a service in a given local area) in the last four years. The most recent conversion, Cygnet's 2016 conversion of its LTMH ward at *Brighouse* from mixed to male only, took [✂] and had an estimated negative EBITDA impact of [✂][17] The Parties submitted that the *Brighouse* conversion was at the lower end of the potential range of time and cost, and provided examples of conversions that required up to [✂]of closure and cost up to [✂].[18]

41. The CMA's investigation confirmed that any conversion between genders or specialisms would, at a minimum, require that all existing patients in a ward are moved elsewhere prior to the ward starting to offer treatment of different specialisms/genders. Given that rehabilitation patients are typically treated for long periods of time, there are practical difficulties in accommodating patients during any transition. This is consistent with the CMA's findings in *Acadia/Priory*.[19]

42. Further, evidence received from the Parties and from third parties indicates that additional costs of conversion are likely to vary significantly depending on the change of use sought. In most cases, a ward providing services for one condition and/or gender cannot immediately provide services for another condition and/or gender, and therefore some physical conversion is

[15] *Acadia/Priory*, paragraph 352.
[16] Parties' submissions.
[17] Parties' submissions.
[18] Parties' submissions.
[19] See for example paragraph 349 and 351 of that decision, which deal, respectively with the practical difficulties of converting wards between specialisms and from one gender to the other.

necessary. Switching costs are, for this reason, likely to be lower in relation to treatment types that use the same physical environment such as LTMH/PD and ASD/LD. Additional staffing costs may also arise. While some specialisms can be treated by the same clinician, other specialisms may require the deployment of clinicians who specialise in the treatment of those conditions.

43. The evidence submitted by third parties concerning the extent of supply-side substitution was mixed. Several competitors indicated that they considered there to be minimal cost to converting a ward to a different gender with the same specialism, with one competitor indicating that such a conversion could be carried out within one month. On the other hand, another competitor suggested that a conversion between specialisms could require the ward to be closed for between two and six months.

44. In terms of motivation for switching, consistent feedback from the Parties and third parties was that the key driver for switching would be to meet unsatisfied demand for a service, rather than to respond to short to medium-term changes in the competitive environment.

45. On the basis of the evidence described above, the CMA has maintained separate product frames of reference by specialism and gender (summarised in the table at paragraph 53 below). However, in line with *Acadia/Priory*, on a cautious basis and recognising the possibility of some supply-side substitution, the CMA also ran an additional sensitivity check by aggregating the Parties' bed shares for each specialism on a combined gender basis and on an overall all Rehabilitation Services basis to assess whether additional concerns could arise.

NHS versus independent/private providers

46. In *Acadia/Priory*, the CMA found that third parties did not consider NHS and private provision as equivalent. Third parties said that they used NHS bed provision first and only used the private sector when NHS provision was unavailable.

47. In this case, the Parties submitted that local NHS hospitals constrain private sector providers. The Parties suggested that, while NHS trusts might be the preferred provider, CCGs have the option to postpone admitting a patient to an independent hospital until capacity becomes available at a local NHS facility.

48. The CMA's investigation did not support the Parties' position; in particular, because there is little or no NHS provision for the specialisms in which the

Parties overlap in most local areas. Further, internal documents submitted by the Parties stated that NHS providers [✄][20]

49. A number of Commissioners told the CMA that there was no local NHS provision for Rehabilitation Services in their local area and therefore NHS beds were not an option at all. Commissioners who did have a local NHS option generally indicated that there is a shortage of NHS supply for Rehabilitation Services, in particular for specialist services. In most cases, therefore, Commissioners would use independent providers for more specialised treatment as they would be the only facilities available to meet the patient's medical needs.

50. In relation to the possibility of Commissioners postponing treatment until an NHS place is available, feedback from Commissioners indicated that the availability of immediate capacity can be a more important consideration than price in many cases. The CMA therefore considers it unlikely that the possibility of postponing care could materially constrain independent providers of Rehabilitation Services.

51. On a cautious basis, the CMA has therefore assessed the impact of the Merger in relation to the supply of Rehabilitation Services by private providers only.[21]

Conclusion on product scope

52. In light of the above, the CMA has established distinct frames of reference by specialism and, in each case, subsequently delineated that specialism further by the treatment of male patients and female patients. In relation to the possibility of supply-side substitution, the CMA has then also identified frames of reference for each specialism on a combined gender basis and a frame of reference for all Rehabilitation Services.

53. This approach produces each of the following product frames of reference in this case:

ABI female patients	ABI male patients	ABI combined gender
ASD female patients	ASD male patients	ASD combined gender

[20] Parties' submissions.

[21] Notwithstanding this approach, in areas where an NHS Trust fell within the relevant catchment area where the CMA had identified competition concerns, the CMA investigated whether that NHS facility could nonetheless exert some constraint on the Parties, and whether such a constraint could mitigate the concerns identified. However, there were no instances where this was the case.

LD female patients	LD male patients	LD combined gender
LTMH female patients	LTMH male patients	LTMH combined gender
LTMH E female patients	LTMH E male patients	LTMH E combined gender
PD female patients	PD male patients	PD combined gender
All Rehabilitation Services		

Geographic scope

54. In common with previous decisional practice (including *Acadia/Priory*), the CMA investigated whether competition for the supply of Rehabilitation Services takes place at a national level and/or at a more local level.[22]

Local vs national competition

55. The CMA's investigation in this case found that Rehabilitation Services are purchased and negotiated at a local level.[23] This is consistent with the CMA's findings in *Acadia/Priory* and the Parties' submissions in this case. In particular, the CMA found that Commissioners routinely seek clinically appropriate placements which are as close by as possible and have a strong preference across all Rehabilitation Services to minimise the distance between a patient's place of origin (usually their home) and where that patient is treated. Commissioners frequently inspect facilities and monitor placements, and therefore the distance from the Commissioner's location is also a relevant factor. The location of a provider and its proximity to the patient and the Commissioner therefore plays a key role in determining the parameters within which competition takes place.

56. However, the CMA has also considered whether the Merger might give rise to competition concerns at the national level. In this context, the CMA notes that the Merger represents the second major transaction in the sector in the past 12 months, following *Acadia/Priory*.

57. The Merger will result in the combined group becoming the largest locked rehabilitation provider in the UK, with an estimated share of around [30-40]%

[22] The CMA has received no evidence to suggest the appropriate geographic frame of reference is wider than national.
[23] With the exception of Wales, where services are purchased by NHS Wales.

on an all-Rehabilitation Services basis.[24] The Acadia Group, currently the largest national provider, will be the second largest provider with an estimated share of 20-25%.[25] The only other players with shares of supply of over 5% will be St Andrew's Healthcare [10-20]%, Elysium with [5-10]% (the new business created by the divestments offered to address the CMA's concerns in *Acadia/Priory*) and Barchester with [5-10]%.

58. The Parties' combined shares of supply on a national basis are at a level below which the CMA would typically identify concerns and the CMA has not received any other evidence to suggest that unilateral effects concerns could arise at the national level. The CMA has therefore focussed its assessment in this case at the local level. However, given the level of consolidation in this market, the limited number of credible providers active on a national basis, and the significant barriers to entry (including the importance of an established track record and reputation), the CMA has taken a cautious approach at the local level in its approach to supply-side substitution (which may be more straightforward for national players with established relationships across a number of Commissioners than independent local players) and the relevant geographic market (as set out further below).

Catchment areas

59. At a local level, in line with its previous decisional practice, the CMA's starting point for analysis of potential competition concerns is the identification of the catchment area over which the Parties' hospitals draw 80% of their patients.[26]

60. In *Acadia/Priory*, there was, in many cases, insufficient data to establish site-specific 80% catchment areas. The CMA therefore analysed that merger by reference to a range of geographic frameworks intended to identify areas where potential competition concerns could arise. These included (where available) 80% catchment areas for each hospital, average catchment areas for different specialisms, and finally a 'stepped catchment area' in rehabilitation from 40 miles to 130 miles' radius from Priory hospitals in ten mile increments.

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[24] Both the CMA, Laing and Buisson (2016), page 22 and the Parties' own estimates (Parties' submissions) estimate the group's combined share is around [30-40]%.
[25] Laing and Buisson indicates Acadia's share would be [20-30]% while the Parties' own estimates suggest it would be only [10-20]%.
[26] The CMA used the postcode of the patient's referring Commissioner as a proxy for the patient location in establishing this 80% catchment area as actual patient postcode data was not available.

61. In this case, sufficient data for both Parties at a site level was available (with the exception of the pipeline sites – Cygnet *Coventry* and Cambian *Brunel House*), including data split by specialism and gender.[27] This allowed the CMA to calculate site-specific 80% catchment areas for the vast majority of the Parties' sites. The CMA then went on to calculate the treatment-average catchment area (across all of that Party's sites providing that treatment).

62. In its competitive assessment, the CMA identified the catchment area producing the most conservative result (ie the highest combined shares of supply) and adopted this as the starting point for its analysis. It then investigated any evidence supporting a wider or narrower catchment area. In addition, as a further sensitivity check, the CMA calculated the Parties' shares of supply at 10 and 20 mile intervals either side of the site-specific and treatment-average catchment areas.

63. It is important to note that the CMA calculated shares of supply for each product frame of reference listed at paragraph 53 above, on the basis of each of the catchment areas described in paragraphs 61 and 62 above, primarily to determine which (if any) sites could be filtered out from further assessment at an early stage. For those sites that failed the filter, the CMA then investigated the potential reasons for any differences between a site-specific catchment area and the treatment-average catchment area, including any evidence provided by respondents on the geographic area over which competition was taking place. This assisted the CMA in understanding local characteristics of competition and ultimately in its decision regarding whether or not competition concerns would arise.[28]

Parties' views

64. The Parties submitted that the CMA should use treatment-average catchment areas, rather than site-specific catchment areas, citing general concerns around the reliability of site-specific catchment areas. The Parties also raised specific methodological concerns relating to the data used in this case.

- *Use of site-specific versus average catchment areas*

65. The Parties argued that use of a site-specific 80% catchment area did not adequately reflect how Commissioners would react in the event of a

[27] The site-specific catchment areas are based on data submitted by the Parties on placements in their facilities over the last three years, which is high quality data that has not been available in other cases.
[28] Consistent with the approach in *Acadia/Priory*, paragraph 367.

hypothetical increase in price and highlighted that the CMA's Merger Assessment Guidelines note that '*the geographic market identified using the hypothetical monopolist test will typically be wider than a catchment area*'.[29] The Parties argued that the site-specific catchment areas would '*systematically understate the geographic area over which CCGs would be willing to send patients in the event of a hypothetical increase in price post-merger*'.[30]

66. The Parties also argued that, due to the uncertainty and small sample sizes with site-specific catchment areas, calculating a treatment-average catchment area provides a more robust estimate (by aggregating the number of observations together and reducing the variation). The Parties claimed that an average figure provides a better representation of the behaviour of Commissioners, which the Parties did not expect to vary significantly between regions. The Parties noted that the CMA has used average catchment areas in other cases. The Parties also submitted that site-specific catchment areas tend to be narrower than the treatment-average catchment area and therefore tend to return higher combined shares in those catchment areas than would be the case with treatment-average catchment areas. The reliability of the data in calculating site-specific catchment areas, and reasoning for adopting these catchment areas, is discussed further below.

67. As a general matter, assessing the geographic scope is a useful tool, but not an end in itself. Its purpose is merely to establish '*a pragmatic approximation for a candidate market to which the hypothetical monopolist test can be applied*'.[31] Moreover, the nature of the phase 1 process, particularly when dealing with many local markets, means that there will generally be insufficient time to establish the precise area of the relevant geographic market. Recognising this, the CMA identifies the geographic area over which competition takes place as the 'frame of reference' and this will often be approximated by the use of 80% catchment areas.

68. The CMA has also narrowed and broadened the catchment areas by 10 and 20 miles – the 'stepped' catchment areas, which addresses the market definition point. However, and as discussed in further detail below, the CMA's market testing found that Commissioners tend to consider, as effective substitutes, the providers within a considerably narrower geographic frame of reference than might be indicated by some measures of

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[29] *Merger Assessment Guidelines*, paragraph 5.2.25.
[30] Parties' submissions.
[31] *Merger Assessment Guidelines*, paragraph 5.2.25.

the site-specific 80% catchment area. Therefore, the CMA has paid particular consideration to the views of Commissioners when identifying the appropriate geographic frame of reference in each local area. Whilst the CMA does use an average catchment area in some local analyses,[32] in a number of previous cases in the healthcare sector, the CMA has considered it appropriate to assess catchment areas based on site-specific 80% catchment areas.[33]

69. In light of the above and, in this case, the CMA believes that the site-specific 80% catchment areas are the appropriate starting point for its analysis given that:

(a) evidence received from the Parties on their patient locations, as well as feedback from Commissioners and evidence from internal documents[34] indicated material differences in the extent of mental health provision in different local areas and the distance Commissioners would send patients across different geographic regions. For example, there may be very specific reasons why Commissioners in one local area may need to send patients much further than they would otherwise normally consider appropriate. Taking a national average risks overstating the true area in which competition takes place in some areas and understating it in others; and

(b) consistent feedback from Commissioners is that proximity is an important factor in placement decisions. As part of its investigation, the CMA asked Commissioners how far they would typically place patients from their origin. The most common response (ie. the mode) was 20-30 miles, while the median response was 40 miles. This was consistent with the CMA's approach of calculating shares of supply on both a site-specific catchment area and a treatment-average catchment area (as, whilst in most cases, the site-specific is narrower than the treatment-average, in a small number of instances the treatment-average is narrower, and so represents the more cautious approach).[35] Further flexing of these catchment areas by 10 and 20 miles ensured that the CMA identified the

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[32] For instance, in retail cases: see *Commentary on retail mergers*, paragraph 2.13, footnote 3.
[33] See: *Completed acquisition by Spire Healthcare Limited of certain assets and business comprising St Anthony's Hospital in Surrey,* paragraph 41; see also the CMA's *Final Report in the Private Healthcare Market Investigation*, paragraph 6.151.
[34] Parties' submissions.
[35] The CMA also considered median, rather than mean, catchment areas for the different frames of reference, as a way of dealing with potential outliers which may make the mean misleading. The CMA found that the median catchment areas tended to be narrower than the mean catchment areas and more in line with the distances over which Commissioners indicated that they would send patients for treatment.

catchment areas giving rise to higher market shares (ie the 'worst case') and so could investigate the potential reasons for this.

70. As stated in paragraph 26 above, identifying the relevant geographic market involves an element of judgment and the boundaries of the market do not determine mechanistically the outcome of the CMA's analysis of the competitive effects of the Merger. The CMA takes this into account in its competitive assessment and uses the shares of supply calculated for the site-specific and treatment-average catchment areas as the starting point only. In many cases, notwithstanding that the shares of supply were high (ie 35% or higher) on narrow catchment areas, following additional analysis the CMA was still able to conclude that sufficient competition would remain post-Merger such that competition concerns would not arise.

- *Reliability of data*

71. The Parties raised a number of concerns around the reliability of data, including that the data points are limited for individual sites and Commissioner addresses have been used as a proxy for patients' home location, which introduces uncertainty and generates a systematic bias which understates the true catchment area.

72. The evidence available to the CMA does not support this position. The CMA believes that it has sufficient observations to calculate the site-specific catchment area. The smallest number of observations for any site is 19 (for [✂] and all other sites have at least 44 observations. This contrasts favourably with the data available in *Acadia/Priory*, where few site-specific observations were available and where the CMA estimated site-specific catchment areas where 10 or more observations were available.

73. The Parties also referred to the CMA's practice of requiring at least 100 respondents for customer surveys. The CMA considers this comparison to be misplaced as there are obvious and material differences between a survey of consumers and data relating to actual patient/Commissioner postcodes. Moreover, the number of observations must be viewed in the context of the total numbers of potential users of the Parties' services.[36] Given the relatively small number of patients using the Parties' facilities overall, having the number of observations available in this case still allows calculation of a meaningful site-specific catchment area.

[36] Indeed, the Parties have noted that the relatively small number of observations for each site reflects the fact that a number of the sites are relatively small and patients are treated for long periods of time, and therefore there is limited natural churn from patients being admitted and discharged (Parties' submissions).

74. Separately, the CMA does not believe there is any systematic bias introduced by the use of Commissioner rather than patient postcodes. The Parties have provided a single example (based only on data for Cygnet's LTMH wards) where patient postcodes generate a larger catchment area than Commissioner postcodes on the basis of a national combined gender average. However, the CMA's review of postcode data does not indicate this is generally true across all frames of reference.

75. In any event, evidence received by the CMA indicates that Commissioner postcodes are also relevant to placement decisions, as Commissioners need to inspect facilities and monitor placements.

Conclusion on geographic frame of reference

76. For the reasons set out above, on a cautious basis, the CMA has assessed the impact of the Merger within the local areas surrounding each of the Parties' sites, which overlap on the basis of that site's site-specific 80% catchment area for the specialism giving rise to the overlap. It has defined the local area either as:

    (a) the local area equivalent to the site-specific 80% catchment area for the specialism giving rise to the overlap (where sufficient observations are available); or

    (b) the local area equivalent to the treatment-average catchment area for the overlapping treatment (calculated as the 80% average of all of that Party's sites providing that treatment) when centred on that site.

Competitive assessment

Theory of harm: horizontal unilateral effects

77. The CMA has assessed whether the Merger could give rise to horizontal unilateral effects, which 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.[37] Horizontal unilateral effects are more likely when the merger parties are close competitors.

78. In this case, the CMA has considered whether a loss of competition at the local level may lead to horizontal unilateral effects in the form of higher

[37] *Merger Assessment Guidelines*, from paragraph 5.4.1.

prices, lower quality/service levels or a lesser range of treatment options being available to Commissioners and patients.

79. 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 unilateral horizontal effects in each product and geographic frame of reference.

Approach to competitive assessment

80. Consistent with the approach adopted in *Acadia/Priory*, as well as healthcare mergers more generally, the CMA has sought, in order to assess the likelihood of the Merger resulting in unilateral effects, to ascertain for each area of overlap:

   (a) the shares of supply of the Parties;

   (b) the distance between the Parties' hospitals and evidence of competition between the Parties pre-Merger; and

   (c) the number of competing hospitals and the extent to which these would impose a constraint on the Parties post-Merger.

81. As set out in paragraph 61 and 62 above, the CMA calculated the Parties' combined share and increment arising from the Merger within the site-specific 80% catchment area for the specialism giving rise to the overlap and within the treatment-average catchment area for all of that Party's sites offering the overlapping treatment. It used, as a starting point, whichever of these catchment area producing the most conservative result (ie the highest shares of supply). As discussed in *Acadia/Priory*, the CMA recognised that there are several limitations with this approach.[38] The CMA therefore applied a number of sensitivity checks to its filtering analysis and used its findings with regard to share of supply only as a starting point for its competitive assessment. Unless otherwise stated in the discussion of SLC sites below, the Parties' shares of supply were not materially higher when calculated on the basis of these sensitivity checks (ie for specialisms on a combined gender or all-Rehabilitation Services basis).

82. With regard to competition between the Parties, given that the location of a provider and its proximity to the patient and the Commissioner plays a key role in determining the parameters within which competition takes place in that local area, the CMA first sought to ascertain the distance between the Parties as compared to other competitors. The CMA also spoke with

[38] See for example paragraphs 58-60.

Commissioners in the local area and reviewed internal documents where relevant to competitive conditions for specific facilities, to identify the extent to which each Party perceived the other as a competitor.

83. With regard to the competitors remaining post-Merger and the extent to which they would exert a competitive constraint on the Parties, the Parties provided the CMA with a list of local competitors and their estimates of bed shares and splits by specialism and gender. The CMA believes that competition for Rehabilitation Services takes place at the local level and so asked Commissioners in the local area to identify competitors which they believed were credible alternatives to the Parties. Whilst in general national players (such as Acadia) were identified as credible alternatives to the Parties,[39] some independent providers which had developed good relationships with Commissioners were also identified as credible alternatives to the Parties.[40] The CMA also reviewed the Parties' internal documents to identify instances where they identified other providers as competitors.

84. Late in the CMA's process, the Parties' submitted a list of further competitors which had not been previously identified by the Parties or Commissioners as credible alternatives. The CMA sought to verify where possible the existence and extent of the competitive offering of these competitors where the inclusion of these additional competitors would materially change shares of supply for those facilities which the CMA had not already excluded from more detailed assessment. The only site for which this applied was Cambian *Oaks* with respect to the treatment of male LTMH patients.[41] In all other cases the Parties' combined share remained above [30-40]% even when taking into account all additional competitors.

85. For the purposes of this decision, the CMA has categorised its assessment of each of the Parties' sites in the following manner:

    (a) **Sites which passed the filtering exercise** (sites which passed all filters);

[39] The CMA did receive some evidence that Commissioners are risk-averse and focused on quality of care, and in this context, having a national brand and reputation can mean it is easier for national chains to flex services and/or expand into new services and geographies. Therefore, the CMA believes that in terms of dynamic competition, the national chains such as the Parties may impose a more significant competitive constraint on one another than local independent operators. However, the CMA has not identified any concerns at a national level and so takes this into account only to the extent that Commissioner feedback indicates it may be relevant to closeness of competition between the Parties' sites in particular local areas.
[40] For instance, The Retreat in York for female PD and St Andrew's hospital for a range of treatment types.
[41] See footnote 51.

(b) **Sites cleared pre-Issues Letter** (sites which failed one or more filters but were cleared prior to the Issues Letter);[42]

(c) **Sites cleared post-Issues Letter** (sites which failed one or more filters, were included in the Issues Letter to the Parties and subsequently cleared); and

(d) **SLC sites** (sites which failed one or more filters, were included in the Issues Letter to the Parties and ultimately identified by the CMA as raising competition concerns).

Sites which passed the filtering exercise

86. Consistent with the approach adopted in *Acadia/Priory*, the CMA has identified those sites for which a detailed competitive analysis was not required by running an initial filter based on the Parties' shares of supply in each of the frames of reference listed at paragraph 53 above.

87. In *Acadia/Priory*, the CMA excluded from detailed investigation only one site for which the merging parties' combined shares of supply were below 30% (on the basis of any plausible catchment area). The CMA's more detailed investigation in that case ultimately found that a realistic prospect of an SLC arose only at sites where the merging parties' combined shares of supply were 40% or higher. In light of this, and given that no Commissioners raised concerns with regard to sites where the Parties' combined share of supply was at, or below, 35%, the CMA decided that a slightly higher baseline filter of 35% was appropriate in this case.

88. As set out above in paragraph 81 above, the CMA calculated the Parties' combined shares of supply centred on each site for the specialisms supplied at that site using two different potential catchment areas, in each case distinguished between whether male or female patients are treated. As a sensitivity check, it also calculated shares of supply for each specialism on a gender combined basis and on a broader all Rehabilitation Services basis (without distinguishing by patient gender treated). If a site returned a share of supply above 35% on any product frame of reference, on any catchment area, it failed the filter.

[42] As set out in the *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), the CMA will send an Issues Letter to Parties in cases that it decides should proceed to a Case Review Meeting. See further paragraphs 7.32 et seq.

89. This exercise excluded from further analysis a total of six sites, namely: Cygnet *Bury*, Cambian *Brunel*, Cambian *Delfryn*, Cygnet *Kenton*, Cygnet *Woking* and Cambian *Woodside*.[43]

Sites cleared pre-Issues Letter

90. In a number of cases, a site failed only one or part of the filters; for example, because:

    (a) it reported a share of supply above 35% at the site-specific catchment area, but these fell below 35% within 10 miles either side of the catchment area and beyond; or

    (b) it reported shares of supply of below 35% with regard to the conditions it currently treated but shares slightly above that when the sensitivity checks were employed with regard to combined gender or on an all Rehabilitation Services basis.

91. In each of these cases, the CMA assessed whether the fact that it had failed one or more filters could be an indication of a potential competition concern. In the majority of cases, the CMA found either that the Parties were not considered to be close competitors by local Commissioners or that sufficient credible competitors would remain in the local area post-Merger. Furthermore, in most cases local Commissioners did not raise any concerns with the Merger.

92. On the basis of these factors, the CMA was able to dismiss competition concerns with regard to catchment areas centred on the following sites: Cambian *Appletree*, Cambian *Cedars,* Cambian *Churchill*, Cambian *Elms*, Cambian *Fairview*, Cambian *Fountains*, Cambian *Grange* and Cambian *Lodge*, Cambian *Heathers*, Cambian Manor, Cambian *Victoria House*, Cambian *Views*, Cambian *Wyke*, Cygnet *Beckton*, Cygnet *Bierley*, Cygnet *Brighouse*, Cygnet *Coventry* (with respect to female LTMH), Cygnet *Ealing*, Cygnet *Harrow*, Cygnet *Lewisham*, Cambian *Sedgley*, Cygnet *Sheffield a*nd Cygnet *Taunton*.

[43] Two other sites passed the initial filter when shares of supply were calculated on catchment areas centred on those sites. These were Cygnet *Brighouse* and Cambian *St Augustine's*. However, these sites in each case fall within the catchment areas of other sites where an SLC has been identified (ie Cambian *Oaks* and Cygnet *Derby*, respectively). Further, given that a Party site may have multiple units or wards, a site may have passed the filter for one ward, but not the other, and so these are not listed here.

Sites cleared post-Issues Letter – Cygnet Coventry (female PD)

93. In response to the Issues Letter, the Parties provided some further information with regard to Cygnet *Coventry* (with respect to female PD), which enabled the CMA to dismiss competition concerns in the local area around that site.

94. Cygnet *Coventry* is a site which opened on 3 April 2017 and planned to serve female patients with three wards for Rehabilitation Services: *Ariel Ward* providing PD Rehabilitation Services to female patients with 18 beds, and *Ariel Court* and *Middlemarch Ward* providing LTMH Rehabilitation service to female patients with 23 beds.[44] No site-specific observations were available to calculate a site-specific 80% catchment area, as the site has only recently opened. Therefore, the treatment-average catchment areaof [✄] [100-125]miles is used.

95. The Parties' combined share of supply of PD Rehabilitation Services to female patients within the treatment-average catchment area is [40-50]%(with a [5-10]% increment).[45] Cambian has three sites within the catchment area, namely in Cambian *Alders* in Gloucester at 62 miles which provides 20 beds, Cambian *Acer* in Chesterfield at 74 miles with 28 beds, and Cambian *Aspen* in Rotherham at 91 miles with 16 beds.[46]

96. The Parties submitted that the Parties are not close competitors insofar as Cygnet's sites provide highly specialist PD treatment, whereas Cambian's sites treats patients of lower acuity with less challenging needs.

97. Further, the Parties are not each other's closest competitors by geography and a number of competitor sites are closer, including Acadia Group, St Andrews and Elysium (with InMind further away but within the catchment area). Feedback from Commissioners indicates that these facilities are highly credible and therefore the CMA would expect that the nearer facilities would impose a more significant competitive constraint on Cygnet *Coventry* than Cambian *Alders* (the closest overlapping site and 62 miles away).

98. No third parties raised any Merger-specific concerns relating to Cygnet *Coventry*.

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[44] In addition, Cygnet *Coventry* is also planned to provide PICU services to female patients with 15 beds.
[45] The CMA's investigation indicated that St Matthew's hospital does not provide any Rehabilitation Services for female patients (and solely for male patients) and therefore the shares of supply exclude St Matthew's hospital. These figures are unchanged following the Parties' addition of further competitors late in the CMA's process (as noted in paragraph 84 above).
[46] The Parties' shares of supply were not materially higher on the basis of specialism gender-combined and all-Rehabilitation Services frames of reference or within stepped catchment areas.

99. In light of the above and in particular given that a number of credible providers will remain post-Merger, which are located closer to Cygnet *Coventry* than the Cambian sites, and that no Commissioners raised concerns, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC in the supply of PD Rehabilitation Services for female pateients within the catchment area of Cygnet *Coventry*.

SLC Sites

100. The remainder of this decision relates to those sites where the CMA has identified competition concerns.

The supply of LTMH Rehabilitation Services to male patients

Cygnet Derby (Wyvern Ward)

101. Cygnet *Derby* (*Wyvern Ward*) provides LTMH Rehabilitation Services to male patients (19 beds) in Derby. There are [✂] hospital-specific observations to calculate a site-specific 80% catchment area, which is [25-50]miles. This is narrower than the treatment-average catchment area of [50-75]miles. On a cautious basis, the CMA has used the site-specific catchment area of [25-50] miles.

Shares of supply

102. Within the Cygnet *Derby* site-specific 80% catchment area, the Parties' combined share of supply in the LTMH male segment is [60-70]%, with a [5-10]% increment. Cambian has five sites in the catchment area, namely: (i) Cambian *Storthfields* in Alfreton, Derbyshire at 18 miles (which provides 22 beds or [5-10] share of LTMH male beds within the Cygnet *Derby* catchment); (ii) Cambian *The Limes* in Rainsworth, Mansfield at 29 miles (30 beds or [10-20]%); (iii) Cambian *Sherwood* in Langwith, Mansfield at 32 miles (18 beds or [5-10]%); (iv) Cambian *St Augustine's* in Cobridge, Stoke-on-Trent at 38 miles (32 beds or [10-20]%)[47] and; (v) Cambian *Sedgley* in Wolverhampton at 48 miles (34 beds or [10-20]%).

Closeness of competition and alternative providers

103. Post-Merger, there would be nine providers active within this catchment area, including the Parties. The Parties would be the largest provider in the area, and would be more than six times the size of their next largest

[47] As *St Augustine's* passed the filter, we have not performed a re-centred analysis for *St Augustine's*.

competitor, Munroe Group (24 beds; [5-10]%). Other significant competitors would include Acadia Group (PiC/Priory) and Huntercombe, both with about 18 beds ([5-10]% each), with the remaining competitors having shares of supply [5-10]%.

104. Apart from one smaller hospital located in Derby at two miles from Cygnet *Derby* (eight beds, mixed gender),[48] the Parties are each other's closest competitors by geography. Commissioners indicated that the Parties compete closely in the local area. Some Commissioners said that they consider the Parties to be their two main options for placement of men with LTMH issues. The CMA received concerns that the Merger may lead to increased prices and/or rationalisation of services in the area.

105. The Parties submitted that there was no realistic prospect of an SLC in relation to Cygnet *Derby* or any of the Cambian sites within the catchment area of Cygnet *Derby* (namely Cambian's facilities *Storthfield, The Limes, St Augustine's* and *Sedgley*) on the basis that:

    (a) it was more appropriate to use a treatment-average catchment area, on which basis the Parties' combined share of supply was below 35% for each site;

    (b) even on the basis of the narrower, site-specific catchment area, there remained a significant number of competitors, including for each site at least two competitor sites located closer than the nearest competing Cygnet/Cambian site; and

    (c) the competitive analysis should take into account a number of NHS LTMH rehabilitation hospitals in and around the East Midlands region.

106. The CMA's position with respect to the appropriate catchment areas and the constraint imposed by NHS sites is set out earlier in this Decision.

107. There are, two more competitors with 18 beds (The Huntercombe) and 12 mixed gender beds (Turning Point, Nottingham Transition Unit) in Nottingham at a similar distance to the closest Cambian site, *Storthfields House* in Alfreton, Derbyshire. Two Commissioners indicated that they would consider St. Andrew's in Northampton as an alternative supplier in the local area and its CQC rating is currently 'good'.

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[48] As noted at paragraph 37 above, the CMA has assumed that 65% of the beds at any mixed gender ward are allocated to male patients. In this example, 5 of the beds at this small hospital would be allocated to male patients for the purposes of calculating shares of beds in the catchment area.

108. An internal document on competitors for Cygnet *Derby*[49] noted [✄] competing private providers in addition to Cambian, namely: [✄] However, the document also states that:

> [✄].

Conclusion

109. The CMA has taken into account all of the evidence above, in particular the Parties' geographic proximity, high combined shares, feedback from third parties that the Parties are close competitors, and evidence from internal documents that remaining competitors might impose a limited competitive constraint. On the basis of this evidence, the CMA believes that there is a realistic prospect that the Merger will result in an SLC in the supply of LTMH Rehabilitation Services for male patients in the site-specific 80% catchment area of Cygnet *Derby (Wyvern Ward),* in relation to Cambian *Storthfields,* Cambian *The Limes*, Cambian *Sherwood*, Cambian *St Augustine's* and Cambian *Sedgley*.

Cambian Storthfields House (Derby)

110. Cambian *Storthfields House* provides LTMH Rehabilitation Services to male patients (22 beds) in Alfreton, Derbyshire. There are [✄] hospital-specific observations to calculate a site-specific 80% catchment area, which is [50-75] miles. This is narrower than the treatment-average catchment area of [50-75] miles. On a cautious basis, the CMA has used the site-specific catchment area of [50-75] miles.

Shares of supply

111. Within the *Storthfields House* site-specific 80% catchment, the Parties' combined share of supply in the male LTMH segment is [50-60]%, with a [5-10]% increment. Cygnet has one site in the catchment area, namely Cygnet *Derby (Wyvern Ward)* at 18 miles which provides 24 beds.

112. The Parties' shares of supply were not materially higher on the basis of specialism combined gender or all-Rehabilitation Services frames of reference. However, applying the 10 and 20 mile stepped catchment analysis showed that the Parties' combined share and increment is even

[49] Parties' submissions.

more significant in a catchment slightly narrower than the site-specific catchment area (peaking at [60-70]% at [25-50] miles).

Closeness of competition and alternative providers

113. The Parties are not each other's closest competitors by geography. Two competitors are located closer to the *Storthfields House* site; namely, Mansfield at eight miles with 18 beds (Debdale Specialist Care) for combined gender patients and Nottingham at 14 miles with 18 beds (Huntercombe) for male patients. In addition, another two sites are located at a comparable distance as Cygnet *Derby*, providing eight beds and 12 beds for combined gender patients.

114. Post-Merger, the Parties would be the largest provider in the area, and would be more than double the size of their next largest competitor, Acadia Group (PiC/Priory) (64 beds; [20-30]%). The third largest provider would be the John Munroe Group (24 beds; [5-10]%). The five remaining competitors make up the remaining supply in male LTMH (combined 57 beds; [10-20]%).

115. The Parties made the submissions set out in paragraph 105, which they indicated applied to each of the Cambian sites within the catchment area of Cygnet *Derby*, including Cambian *Storthfields*.

116. As Cambian *Storthfields House* is within the catchment area of Cygnet *Derby*, third party concerns and evidence from the Parties' internal document summarised in relation to Cygnet *Derby* are also relied upon in the CMA's competitive assessment of Cambian *Storthfields House*.

Conclusion

117. The CMA has taken into account all of the evidence described above (and as set out for Cygnet *Derby*), in particular the Parties' high combined shares, feedback from third parties that the Parties are close competitors, and evidence from internal documents that remaining competitors might impose a more limited competitive constraint. On the basis of this evidence, the CMA believes that there is a realistic prospect of an SLC in the supply of LTMH Rehabilitation Services for male patients in the site-specific 80% catchment area of Cambian *Storthfield*, in relation to Cygnet *Derby*.

Cambian The Limes (Mansfield)

118. Cambian *The Limes* provides LTMH Rehabilitation Services to male patients (18 beds) in Langwith, Mansfield. There are [✂] hospital-specific observations to calculate a site-specific 80% catchment area, which is [25-

50] miles. This is narrower than the treatment-average catchment area of [50-75] miles. On a cautious basis, the CMA has used the site-specific catchment area of [25-50] miles.

Shares of supply

119. Within the Cambian *The Limes* 80% site-specific catchment, the Parties' combined share of supply in LTMH for male patients is [70-80]%, with an [10-20]% increment. Cygnet has one site in the catchment area, namely Cygnet *Derby (Wyvern Ward)* at 31 miles which provides 24 beds.

Closeness of competition and alternative providers

120. The Parties are not each other's closest competitors by geography. There are two sites that are considerably closer to Cambian *The Limes*; namely, Debdale Specialist Care in Mansfield at 7 miles with 22 beds (or [10-20]%) for LTMH male patients and Turning Point in Rotherham at 19 miles with 12 beds (or [0-5]%) for LTMH (on a combined gender basis).

121. Post-Merger, there would be five remaining providers active within this catchment area, including the Parties. However, the Parties, with 125 beds (or a share of [70-80]%) would be by far the largest provider in the area, being more than seven times the size of their next largest competitor, Huntercombe, which has 18 beds (or [10-20]% of the share of supply of beds in male LTMH). The other competitors are much smaller, being Turning Point with 15.5 beds (or [5-10]%), Debdale Specialist Care with 11.5 beds ([5-10]%), and Craegmoor Healthcare with 5 beds ([0-5]%).

122. In addition to the Parties' submissions set out in paragraph 105, the Parties also noted the difference in the average length of stay at Cambian *The Limes* compared to Cygnet *Derby*, which they considered showed that the Parties' facilities serve different purposes (and should therefore not be considered as close competitors). The CMA notes however that this is contrary to the views received from Commissioners, as set out in paragraph 104 above, that the Parties compete closely in the local area and for some Commissioners are considered the two main options for placement of men with LTMH issues.

123. As Cambian *The Limes* is within the catchment area of Cygnet *Derby*, third party concerns and evidence from the Parties' internal documents summarised in relation to Cygnet *Derby* are also relied upon in the CMA's competitive assessment of Cambian *The Limes*.

Conclusion

124. The CMA has taken into account all of the evidence described above (and as set out for Cygnet *Derby*), in particular the Parties' high combined shares, feedback from third parties that the Parties are close competitors, and evidence from internal documents that remaining competitors might impose a more limited competitive constraint. On the basis of this evidence, the CMA believes that there is a realistic prospect of an SLC in the supply of LTMH Rehabilitation Services for male patients in the site-specific 80% catchment area of Cambian *The Limes*, in relation to Cygnet *Derby*.

Cambian Sherwood (Mansfield)

125. Cambian *Sherwood* is in Rainworth, Mansfield and has Rehabilitation Services wards at *Sherwood House* and *Sherwood Lodge.*[50] *Sherwood House* (30 beds) and *Sherwood Lodge* (17 beds) provide LTMH and LD Rehabilitation Services respectively for male patients. The only overlap in the Parties' activities arises in relation to the supply of LTMH services for male patients, and therefore the LD services at Cambian *Sherwood* are not considered further.

126. In relation to *Sherwood House,* there are [✄] hospital ward-specific observations to calculate a site-specific 80% catchment area, which is [50-75] miles. This is similar to the treatment-average catchment area of [50-75] miles. On a cautious basis, the CMA has used the site-specific catchment area of [50-75] miles.

Shares of supply

127. Within the Cambian *Sherwood House* 80% site-specific catchment area, the combined share of supply is [40-50]%, with a [5-10]% increment, in LTMH for men. The only Cygnet site in the catchment area is Cygnet *Derby (Wyvern Ward)* at 29 miles which provides 19 beds (which accounts for the [5-10]% increment).

128. The Parties' shares of supply were not materially higher on the basis of specialism combined gender or all-Rehabilitation Services frames of reference. However, applying a stepped catchment analysis (as outlined in paragraph 68), the Parties' combined share and increment is even more

[50] In addition, Sherwood provides step-down services in Sherwood Lodge to LD patients (nine beds).

significant in a catchment slightly narrower than the site-specific catchment area (peaking at [60-70]% at [25-50] miles).

Closeness of competition and alternative providers

129. The Parties are not each other's closest competitors by geography. There are three providers that are considerably nearer to *Sherwood House*; namely, Mansfield at six miles with 18 beds (Debdale Specialist Care) for combined gender patients, Nottingham at 14 miles with 18 beds (Huntercombe) for LTMH male patients and Gedling at 15 miles with 18 beds (Turning Point) for combined gender patients.

130. Post-Merger, there would be eight remaining providers active within this catchment area, including the Parties. However, the Parties would be the largest provider in the area and significantly larger than their next largest competitor, Acadia Group (PiC/Priory), which provides 94.5 beds (or [20-30]% of the share of supply in male LTMH). The next largest competitors would be the John Munroe Group with 24 beds (or [5-10]% of the share of supply). The remaining five competitors are all significantly smaller, each having 18 beds or less (or less than 5%).

131. In addition to the Parties' submissions set out in paragraph 105, the Parties also submitted that there is a level of product differentiation between the Parties because Cambian *Sherwood* has specialist staff to treat patients with a secondary diagnosis of LD. The CMA notes however that this is contrary to the views received from Commissioners, as set out in paragraph 104 above, that the Parties compete closely in the local area and for some Commissioners are considered the two main options for placement of men with LTMH issues.

132. As Cambian *Sherwood* is within the catchment area of Cygnet *Derby*, third party concerns and evidence from the Parties' internal documents summarised in relation to Cygnet *Derby* are also relevant to the competitive assessment of Cambian *Sherwood*.

Conclusion

133. The CMA has taken into account all of the evidence described above (and as set out for Cygnet *Derby*), in particular the Parties' high combined shares, feedback from third parties that the Parties are close competitors, and evidence from internal documents that remaining competitors might impose a more limited competitive constraint. On the basis of this evidence, the CMA believes that there is a realistic prospect of an SLC in the supply of

LTMH Rehabilitation Services for male patients in the site-specific 80% catchment area of Cambian *Sherwood* in relation to Cygnet *Derby*.

Cambian Oaks (Barnsley)

134. Cambian *Oaks* provides LTMH Rehabilitation Services to male patients (36 beds) in Barnsley. There are [✂] hospital-specific observations to calculate a site-specific 80% catchment area, which is [25-50] miles. This is narrower than the treatment-average catchment area of [50-75] miles. On a cautious basis, the CMA uses the site-specific catchment area of [25-50] miles.

Shares of supply

135. Within the 80% site specific catchment area for Cambian *Oaks*, the Parties' combined share of supply in the LTMH male segment is [40-50]%,[51] with a [10-20]% increment. Cygnet has one site in the catchment area, namely Cygnet *Brighouse* (which provides 24 beds or the increment) at 21 miles.

136. The Parties' share of supply on the basis of specialism combined gender or all-Rehabilitation Services frames of reference is higher in some catchment areas. Applying a stepped catchment analysis (as outlined in paragraph 68) also demonstrated that the Parties' combined share and increment is even more significant in a catchment slightly narrower than the site-specific catchment area (peaking at [✂]% at [25-50] miles).

Closeness of competition and alternative providers

137. The Parties are not each other's closest competitors by geography. Turning Point is the nearest competitor to Cambian *Oaks* with a site with 12 beds for LTMH Rehabilitation Services for combined gender patients in Rotherham at 15 miles. Acadia Group has three sites at comparable distance, supplying 22 beds for male patients in Dewsbury at 16 miles, 21 beds for male patients in Leeds at 28 miles, and 10 beds for combined gender patients in Stockport at 31 miles.

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[51] As stated in paragraph 84 above, the Parties identified a number of further competitors late in the CMA's process, including three in the catchment area of Cambian *Oaks*. The Parties submitted that, when taking into account these additional competitors, the Parties combined share of supply in the catchment area of Cambian *Oaks* falls below -40%[✂]. However, the CMA confirmed that one of the competitors identified by the Parties did not operate a hospital on the site identified and, with respect to the second, one Commissioner informed the CMA that it had only referred patients with LD and not LTMH to the facility. The CMA's investigation indicated that the third does offer rehabilitation services for male patients suffering from LTMH. However, as the inclusion of this third competitor would in any event not materially alter the Parties' combined share of supply, it has not been necessary to further verify the existence of this competitor. On a cautious basis, therefore, the CMA has not altered the shares of supply in this paragraph or the subsequent paragraph to reflect the additional competitors identified by the Parties.

138. Post-Merger, there would be six remaining providers active within this catchment area, including the Parties. However, the Parties would be the largest provider in the area and would be significantly larger than the second largest provider, Acadia Group (PiC/Priory) which provides 66.5 beds (or [20-30]% of the LTMH male beds). The most significant other provider would be Deepdene Care with 31.5 beds (or [10-20]%).

139. The Parties also submitted that they were not close competitors with regard to Cambian *Oaks* as this is a former low secure unit and has the facilities to deal with relatively challenging patients, while Cygnet *Brighouse* is a converted nursing home and does not have any facilities to treat patients with complex needs (as demonstrated by the fact that [✄]).

140. However, this does not accord with some of the third party views received by the CMA. Some Commissioners indicated that the Parties are close competitors in relation to male LTMH patients, with one Commissioner listing only the Parties' sites amongst its top five suppliers for male LTMH patients. This Commissioner indicated that similar kinds of patients are placed at each of the Parties' facilities and another Commissioner indicated that other local options did not have the ability to deal with patients as complex as those who could be treated by the Parties. That same Commissioner noted a lack of capacity of providers in the area for placing male LTMH patients with more challenging conditions.

141. Further, many Commissioners raised concerns that the Merger may result in rationalisation of the Parties' services in the area, which would reduce choice for placements and could lead to higher prices and less bargaining power for Commissioners. Commissioners were also concerned that the Merger may require them to place patients further away in future.

142. The CMA notes that one Commissioner stated that it considered Coral Lodge (an NHS facility) to be on an equal footing with Cambian *Oaks*. The CMA has therefore taken into account that this facility may pose some constraint on the Parties, although it was not sufficient to mitigate the concerns identified.

Conclusion

143. The CMA has taken into account all of the evidence set out above, in particular the Parties' high combined shares, geographic closeness of competition, and third party comments and concerns. On the basis of this evidence, the CMA believes that there is a realistic prospect of an SLC in the supply of LTMH Rehabilitation Services to male patients in the site-specific 80% catchment area of Cambian *Oaks*, in relation to Cygnet *Brighouse*. The

CMA notes that the high shares on the basis of the possibility of supply-side substitution give further cause for concern, but the CMA has not identified an independent SLC on the basis of supply-side substitution.

The supply of LTMH Rehabilitation Services to female patients

Cygnet Kewstoke (Weston-Super-Mare)

144. Cygnet *Kewstoke* has two wards with Rehabilitation Services near Weston-Super-Mare, namely Cygnet *Kewstoke The Lodge* and Cygnet *Kewstoke (Knightstone Ward),* providing Rehabilitation Services to female patients for LTMH (12 beds) and PD (16 beds) respectively.[52] The services provided by Cygnet *Kewstoke The Lodge* for female LTMH patients are considered in this section.

145. For Cygnet *Kewstoke The Lodge*, there are [✂] hospital-specific observations to calculate a site-specific 80% catchment area, which is [125-150] miles. This is substantially wider than the treatment-average catchment area of [75-100] miles. On a cautious basis, the CMA has used the treatment-average catchment area of [75-100] miles.

Shares of supply

146. Within the LTMH female average catchment area of Cygnet *Kewstoke*, the combined share of supply in the LTMH female segment is [50-60]%, with a [10-20]% increment.[53] The only Cambian site in the catchment area is Cambian *St Teilo* in Gwent at 41 miles with 23 beds.

147. The Parties' shares of supply were not materially higher on the basis of specialism combined gender or all-Rehabilitation Services frames of reference. However, applying a stepped catchment analysis (as outlined in paragraph 68) demonstrated that the Parties' combined share is consistently high, remaining above [40-50]% between [75-100] and [125-150] miles ([✂] miles being closest to the site-specific catchment area).

[52] Cygnet *Kewstoke* also provides low secure services to female patients with 16 beds, and to male patients Acute and PICU services with 12 and 16 beds for the respective services.
[53] The figures listed in this paragraph, and those listed in the subsequent paragraph regarding shares of competitors, do not reflect the revised market shares submitted by the Parties following the identification of additional competitors late in the CMA's investigation (as noted in paragraph 84 above). However, the CMA notes that the Parties' combined share of supply within the average catchment remains above 40% [✂] even when considering all additional competitors.

Closeness of competition and alternative providers

148. The Parties are not one another's closest competitors by geography. In Weston-Super-Mare at five miles Cygnet *Kewstoke*, Elysium has a 24 bed hospital for mixed gender patients ([10-20]% of catchment supply for LTMH F[54]). A further two competitors have sites at Bristol at about 30 miles for mixed gender and LTMH/PD female patients with a combined 17 beds (or specialism/gender adjusted [10-20]% of catchment supply). The other three sites are located in South Wales at 54 to 61 miles with a combined 41 beds, 34 of which are mixed gender ([20-30]% of catchment supply for LTMH F) and located closer to Cambian's *St Teilo*.

149. Post-Merger, there would be four remaining providers including the Parties. However, the Parties would be the largest provider in the area, and significantly larger than their next largest competitor, which would be Elysium with 20 beds (or [20-30] %), followed by Acadia Group (PiC/Priory) with 11 beds (or [10-20]%) and Ocean Community Services with an estimated 3.5 beds (or [5-10]%).

150. The Parties submitted that there was no realistic prospect of an SLC in relation to Cygnet *Kewstoke* (or Cambian *St Teilo*) for the following reasons:

(a) there remain a number of competitors within the site-specific catchment area of each site, including some which are located closer than the nearest Party site;

(b) the shares of two of the main competitors (which have mixed-gender wards) is furthermore likely to be understated, on the basis of the CMA's methodology (since only 35% of beds have been allocated to treating female patients for the purposes of the share calculations). If these two sites could be flexed to accommodate all female patients, the Parties combined market shares would be lower;

(c) the competitive analysis should take into account a number of NHS LTMH rehabilitation hospitals in the region; and

(d) Cygnet *Kewstoke The Lodge* is used as a step down for patients from other wards within the Kewstoke site, with [✂]% of patients admitted in the past 12 months having stepped down from another ward. As these

[54] In calculating market shares, if a competitor site provides treatment for both male and female patients (i.e. a mixed ward) we have assumed 65% of beds are used for the treatment of male patients and 35% of beds are used for the treatment of female patients. This is consistent with the CMA's approach in *Acadia/Priory*.

beds are not available for Commissioners on the open market, Cygnet's own market share therefore overstates its true position.

151. Regarding the Parties' submission in paragraph (a) above, as set out in paragraph 37, where the actual split between genders is unknown, the CMA has assumed (consistent with the position adopted in *Acadia/Priory*) a 65:35 male to female split for the purposes of its market share calculations. The CMA did not have any evidence for the particular competitor sites in question to depart from this position. With regard to (c), as the the number of beds used by Kewstoke's own step-down patients will vary, and that any adjustment to reflect in-house step-down patients would also need to be reflected for competitors that have step-down facilities (on which the CMA has not received any evidence), the CMA does not believe it appropriate to adjust its share of supply estimates following this submission.

152. The Parties submitted further that Cambian *St Teilo* in Wales is not a close competitor to Cygnet *Kewstoke* because NHS Wales commissions Rehabilitation Services on the basis of a national framework and tries to keep patients within Wales wherever possible.[55] The CMA does not consider that the placement data provided by the Parties supports this conclusion. While Cygnet *Kewstoke* had only [✄] female LTMH patients in the last three years funded by CCGs from Wales, the CMA does not regard this as an insignificant number in the context of Cygnet *Kewstoke* having had only [✄] patients in total. In addition, the majority of the patients at Cambian *St Teilo* [✄] were funded by CCGs from England. Diagrammatic evidence submitted by the Parties regarding the patient locations of Cygnet *Kewstoke* and Cambian *St Teilo* patients also indicates that there is a significant degree of overlap between the Parties' sites. Therefore, the evidence does not support the Parties submission that the sites are not competing with one another.

153. Further, third parties have indicated that Cygnet *Kewstoke* is part of the Welsh National Framework Agreement, despite not being located in Wales. The CMA has received no evidence to suggest that sites in Wales (ie Cambian *St Teilo*) would not compete with Cygnet *Kewstoke*.

Conclusion

154. The CMA has taken into account all of the evidence described above, in particular the high combined shares of supply, the limited number of other facilities in the area and feedback from third parties that the Parties do

[55] Parties' submissions.

compete with each other. On the basis of this evidence, the CMA believes there is a realistic prospect of an SLC in the supply of LTMH Rehabilitation Services for female patients in the treatment-average catchment area of Cygnet *Kewstoke,* in relation to Cambian *St Teilo.*

Cambian St Teilo (Rhymney)

155. Cambian *St Teilo* provides LTMH Rehabilitation Services to female patients (9 beds) in Rhymney, South-East Wales. There are [✂] hospital-specific observations to calculate a site-specific 80% catchment area, which is [125-150] miles. This is considerably wider than the treatment-average catchment area of [75-100] miles. On a cautious basis, the CMA has used the site-specific catchment area of [125-150] miles.[56]

Shares of supply

156. Within the Cambian *St Teilo* 80% site-specific catchment area, the combined share of supply in the LTMH female segment is [50-60]%, with a [20-30]% increment.[57] Cygnet has two sites within this catchment area, namely Cygnet *Kewstoke* in Weston-Super-Mare at 74 miles with 23 beds and Cygnet *Coventry (Middlemarch Ward and Ariel Court)* in Coventry at 122 miles which provides 12 beds.

Closeness of competition and alternative providers

157. The Parties are not one another's geographically closest competitors. However, the competitors located closer to Cambian *St Teilo* are all small facilities. Two competing providers are located in Wales (Cygnet has no Rehabilitation Services in Wales); namely, Elysium in Monmouthshire at 19 miles with approximately 12 female LTMH beds (or [5-10]% of the share of supply), and PiC/Priory in Monmouthshire at 22 miles and Cardiff at 27 miles with 4 and 3 beds respectively (or [5-10]% of the share of supply). Two providers, PiC/Priory and Ocean Community Services, are located closer to *St Teilo* in Bristol at 61 and 63 miles with approximately 3.5 beds each (or [0-5]% each). Furthermore, Elysium is located at a comparable distance as

[56] As, unlike for each of the other SLC sites, in this case it was the wider of the two alternative catchment areas that produced the higher combined shares of supply.
[57] The figures listed in this paragraph, and those listed in the subsequent paragraph regarding shares of competitors, do not reflect the revised market shares submitted by the Parties following the identification of additional competitors late in the CMA's investigation (as noted in paragraph 84 above). However, the CMA notes that the Parties' combined share remains above 40% [✂] even when taking into account all additional competitors.

Cygnet *Kewstoke* to Cambian *St Teilo*, with and approximate 8.5 beds (or [5-10]%).

158. Post-Merger, there would be six remaining providers active within this catchment area, including the Parties. However, the Parties would be the largest provider in the area and more than three times the size of their next largest competitor, Acadia Group (PiC/Priory) which provides approximately 24.5 beds (or [10-20]% of the bed share of supply in female LTMH), followed by Elysium with approximately 20.5 beds (or [10-20]%). The remaining competitors are located roughly at the same distance as Cygnet *Coventry* (and Cambian *Raglan House*).

159. The Parties made the submissions set out in paragraph 150, which apply to both Cygnet *Kewstoke* and Cambian *St Teilo.*

160. As Cambian *St Teilo* is within the catchment area of Cygnet *Kewstoke*, third party concerns summarised above in respect of that site are also relied upon in the CMA's competitive assessment of Cambian *St Teilo.* Third parties confirmed that the Parties compete with one another despite the Cambian site being in Wales and the Cygnet site being in England.

Conclusion

161. The CMA has taken into account all of the evidence described above (and as set out for Cygnet *Kewstoke*), in particular the high combined shares and increment, the limited number of other facilities in the area and feedback from third parties that the Parties do compete with each other. On the basis of this evidence, the CMA believes that there is a realistic prospect of an SLC in the supply of LTMH Rehabilitation Services to female patients in the site-specific 80% catchment area of Cambian *St Teilo,* in relation to Cygnet *Kewstoke* and Cygnet *Coventry (Middlemarch Ward and Ariel Court)*.

Cambian Raglan House (Smethwick)

162. Cambian *Raglan House* provides LTMH Rehabilitation Services to female patients (25 beds) in Smethwick nearby Birmingham. There are [✄] hospital-specific observations to calculate a site-specific 80% catchment area, which is [25-50] miles. This is narrower than the treatment-average catchment area of [75-100] miles. On a cautious basis, the CMA has used the site-specific catchment area of [25-50] miles.

Shares of supply

163. Within the 80% site specific catchment area for *Raglan House*, the combined share of supply in the LTMH female segment is [50-60]% with a [20-30]% increment.[58] Cygnet Coventry (*Middlemarch Ward* and *Ariel Court)* in Coventry at 28 miles represents the full increment.

164. The Parties' shares of supply were not materially higher on the basis of specialism combined gender or all-Rehabilitation Services frames of reference. However, applying a stepped catchment analysis (as outlined in paragraph 68) identified that the Parties' combined share and increment is significantly higher in the catchment area just narrower than the site-specific catchment area, being [60-70]% at [25-50] miles.

Closeness of competition and alternative providers

165. The Parties are not each other's closest competitors by geography, with two competitors being closer: Acadia Group (PiC/Priory) with three sites accounting for 34 beds (or [20-30]%) and Options for Care with 15 beds (or [10-20]%). These sites are all much closer than Cygnet *Coventry,* ranging from two to 13 miles from Cambian *Raglan House*.

166. Post-Merger, there would be four remaining providers active within this catchment area, including the Parties. However, the Parties would be the largest provider in the area, being significantly larger than the next largest competitor, Acadia Group (PiC/Priory) which provides 34 beds (or [20-30]%). The next largest competitor would be Inmind with 17 beds (or [10-20]%).

167. The additional two competitors are much further than Cygnet *Coventry* from Cambian *Raglan House* at 44 to 45 miles. In addition, one of those competitors, Aaron's Specialist Unit at Rushcliffe Care Group, is likely to be a more remote competitor to Cambian *Raglan House* because of its small size.

168. The Parties submitted that there was no realistic prospect of an SLC in relation to Cambian *Raglan House* (or Cygnet *Coventry*) for the same

[58] The figures listed in this paragraph, and those listed in the subsequent paragraph regarding shares of competitors, do not reflect the revised market shares submitted by the Parties following the identification of additional competitors late in the CMA's investigation (as noted in paragraph 84 above). However, the CMA notes that the Parties' combined share of supply within this catchment remains [✂] close to 40% [✂] even when considering all additional competitors.

reasons as those set out in paragraph 105 above in relation to Cygnet *Derby* and the Cambian sites within its catchment area.

169. A Cygnet document in relation to development of Cygnet *Coventry* notes [✂][59]

170. No third parties raised any merger specific concerns regarding Cambian *Raglan House*, but the CMA has placed limited weight on this given that the potential overlap is with a planned site (Cygnet *Coventry*) and so Commissioners are unlikely to regard these facilities as significant competitors at present.

Conclusion

171. The CMA has taken into account all of the evidence above, particularly the Parties' high combined shares of supply and evidence in internal documents that there may be limited competitors in the local area. On the basis of this evidence, the CMA believes that there is a realistic prospect of an SLC in the supply of LTMH Rehabilitation Services for female patients in the site-specific 80% catchment area of Cambian *Raglan House*, in relation to in relation to Cygnet's *Middlemarch Ward* and *Ariel Court* in Coventry.

The supply of PD Rehabilitation Services to female patients

172. This section first discusses some overarching submissions made by the Parties with regard to closeness of competition between them in relation to the supply of PD Rehabilitation Services to female patients.

Closeness of competition between the Parties with regard to PD Rehabilitation Services to female patients

173. As a general matter, the Parties submitted that they are not close competitors in relation to treatment of female PD patients across all sites that offer these services. The Parties submitted that Cygnet's PD sites all provide highly specialised dialectical behaviour therapy (**DBT**) within a semi-secure hospital environment, and accept patients with a high level of challenging behaviour and risk, while Cambian's PD sites treat female patients with less challenging needs and are generally seen as a 'step down' in cost and complexity.

174. To support this position, the Parties argued that:

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[59] Parties' submissions.

(a) Cygnet's specialised treatments are provided within large hospitals allowing them to treat patients who might have higher levels of risk such as self-harm or suicide. Further, Cygnet's facilities have a different physical environment, with all ligature risks removed and higher levels of security in terms of air-locks and the perimeter of the facility;

(b) at least one of Cygnet's facilities (*Kewstoke*) is assessed by the CQC as a Tier 4 facility;

(c) it would not be clinically appropriate to mix the more acute patients treated at Cygnet facilities with those treated at Cambian's facilities and that each of [✂];

(d) the average length of stay in Cygnet's hospitals is shorter [✂] compared with [✂] a locked rehabilitation ward; and

(e) the average bed/day price in Cygnet's hospitals is higher.[60]

175. The CMA assessed the extent to which their services are highly differentiated and spoke to Commissioners in this regard. While Commissioners confirmed that the Parties' offerings were differentiated and may be better suited to different patients, a number indicated they would nonetheless regard each of Cambian *Alders /* Cygnet *Kewstoke* and Cambian *Acer* and *Aspen* / Cygnet *Bierley* as competitors for locked rehabilitation placements for female PD patients.

176. In particular:

(a) a number of Commissioners said that they value being able to seek assessments of patients by different sites with different approaches to treatment and to have the ability to choose the option that is best suited to the individual patient's needs (sometimes also in consultation with that patient);

(b) one Commissioner told us that they no longer place patients at Cygnet *Bierley* following a poor experience and identified Cambian *Aspen* and *Acer* as sites where they now place the kind of patient they previously placed at Cygnet *Bierley*;

(c) other Commissioners said that even if they don't currently place patients at both Parties' sites, they would consider both Parties' sites for the same kind of patient; and

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[60] Parties' submissions.

(d) in relation to the availability of a DBT approach to treatment, consistent feedback from Commissioners was that this was merely a different approach which may be appropriate for some patients and not others. Commissioners told us that whether DBT was appropriate for a particular patient will depend on a range of factors which include the patient's risk level, but also include factors unrelated to acuity such as intellectual ability.

177. The CMA also considered the relevance of the Parties' submission that Cygnet's sites operate as Tier 4 facilities while Cambian's sites operate as Tier 3 facilities. The CMA understands that Tier 4 facilities are typically low secure facilities, in which patients are funded by the NHS as opposed to CCGs.[61] However, neither the *Knightstone Ward* at Cygnet *Kewstoke* nor the *Bowling Ward* at Cygnet *Bierley* are currently accredited low-secure facilities, meaning they cannot take these NHS patients and are, at present, accepting placements from CCGs.

178. The Parties submitted these facilities would become accredited low-secure facilities as soon as the NHS moratorium on opening new low secure facilities is lifted. However, the Parties did not provide any clear evidence for this, and the CMA notes there is no certainty on (if and) when the NHS moratorium, which has been in place since 2013, will be lifted. The Parties' submitted evidence of the CQC assessment of the Parties' sites, but the CMA notes this evidence is mixed and not sufficiently robust to be relied upon in the context of Commissioner feedback that the sites do compete (e.g. the CQC website lists Cygnet *Kewstoke* as a Tier 3 PD service but provides an assessment of its Tier 4 facilities, while Cygnet *Bierley* is listed as 'forensic inpatient/secure wards').

179. Moreover, an internal document received from Cygnet indicates that internally, Cygnet describes *Kewstoke* and *Bierley* as [✄].[62] This is also consistent with the Cygnet website which identifies only *Beckton* and *Ealing* as Tier 4 facilities.[63]

180. Finally, in relation to whether it would be appropriate for more and less acute patients to be placed on the same ward, the evidence received by the CMA is mixed. The Parties told the CMA that Cygnet's facilities would [✄], but no further evidence of this (eg. [✄]) was provided. On the other hand, another provider told the CMA that acute and less acute patients could be placed on the same ward (depending on case-specific considerations around patient

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[61] personalitydisorder.org.uk
[62] Parties' submissions.
[63] Cygnet website as at 3 April 2017.

mix). The CMA was also told by one Commissioner that, in their experience, Cygnet does in fact mix patients of different levels of acuity within its female PD wards.

181. Therefore, while the CMA's investigation confirmed that there are differences between the approaches to treatment at the Parties' female PD sites, the CMA does not consider that the differentiation in the Parties' offering is sufficient to conclude that Cygnet could not be a meaningful competitive constraint on Cambian in relation to treatment of female PD patients (or *vice versa*). Therefore, to the extent that evidence has been received suggesting that particular facilities in a local area provide a differentiated service, this has been taken into account in the competitive assessment.

182. The CMA's assessment of competition for each site is set out below.

Cygnet Kewstoke (Weston-Super-Mare)

183. As outlined at paragraph 144 above, Cygnet *Kewstoke* has two wards with Rehabilitation Services near Weston-Super-Mare: Cygnet *Kewstoke The Lodge* and Cygnet *Kewstoke (Knightstone Ward),* providing Rehabilitation Services to female patients for LTMH (12 beds) and PD (16 beds) respectively.[64] This section considers the *Knightstone Ward* for female PD patients.

184. For Cygnet *Kewstoke (Knightstone Ward)*, there are [✂] hospital-specific observations to calculate a site-specific 80% catchment area, which is [125-150] miles. This is substantially wider than the treatment-average catchment area of [100-125] miles. On a cautious basis, the CMA has used the treatment-average catchment area of [100-125] miles.

Shares of supply

185. Within the treatment-average catchment of Cygnet *Kewstoke*, the Parties' combined share of supply in the PD female segment is [40-50]%, with a [20-30]% increment.[65] The only Cambian site in the catchment area is Cambian *Alders Clinic* in Gloucester at 49 miles, which provides 20 beds.

186. The Parties' shares of supply were not materially higher on the basis of specialism combined gender or all-Rehabilitation Services frames of

[64] Cygnet *Kewstoke* also provides low secure services to female patients with 16 beds, and to male patients Acute and PICU services with 12 and 16 beds for the respective services.
[65] The combined shares of supply were revised downwards from [50-60]%, with a 20-30]% increment, after confirming with the Acadia Group (PiC/Priory) that [✂]. These figures are unchanged following the Parties' addition of further competitors late in the CMA's process (as noted in paragraph 84 above).

reference. However, applying a stepped catchment analysis (as outlined in paragraph 68) demonstrated that the Parties' combined share is higher in a catchment area just narrower than the specialism average which was adopted by the CMA as the primary catchment area, being [70-80]% with a [30-40]% increment at [75-100] and [100-125] miles from Cygnet *Kewstoke*.

187. Although the shares are notably lower at the site-specific 80% catchment area, this is due to the larger catchment area taking in a significant number of competitors in the Midlands. However, the patient/CCG postcode data indicated that the geographic location of that patients is highly asymmetric, with the majority of patients at Cygnet *Kewstoke* coming from the South West, where there is little provision. Therefore, the CMA does not consider that lower shares at the site-specific catchment mitigate the concerns as a result of higher shares at the narrower treatment-average catchment.

Closeness of competition and alternative providers

188. Apart from a small hospital located in Bristol at 30 miles (seven beds PD/LTMH or adjusted [5-10]% share of supply in the PD female segment), the Parties are each other's closest competitors by geography. The two remaining competitors are located in South Wales at 61 miles (11 beds or [10-20]%) and in Birmingham at 101 miles (24 beds or [20-30]%). The Birmingham site in particular is likely to be a less significant competitive constraint due to the distance from the Parties' facilities.[66]

189. Post-Merger, there would be four remaining providers active within this catchment area, including the Parties. The Parties would be the largest provider in the area, and significantly larger than their next largest competitor, Acadia Group (PiC/Priory), which provides 24 beds (or [30-40]%), followed by Ludlow Street Healthcare with 11 beds (or [10-20]%) and Ocean Community Services with an estimated 3.5 beds (or [5-10]%).

190. The Parties submitted that competition concerns do not arise in relation to this overlap because there is a level of differentiation between the Parties, namely Cygnet provides highly specialised treatment for challenging patients, and Cambian treats patients with less challenging needs. The Parties state as supporting evidence the higher daily rates Cygnet charges at its clinics (which is particularly [✂] .

191. The CMA believes that Commissioners will take into account the final price for the treatment of any patient, which depends amongst other things on the

[66] Third Parties told us that third party facilities located outside the South West did not compete closely with either Party, due to the distance and lack of referrals from the South West region.

average length of stay. The average daily fee rate may not therefore be the most important metric to Commissioners.

192. In relation to treatment of female PD, Commissioner feedback confirmed that while there is some differentiation in the level of specialism offered by Cygnet *Kewstoke* in Weston-Super-Mare and Cambian *Alders Clinic* in Gloucester, at least some Commissioners view them as alternatives.

193. A number of Commissioners in the local area expressed concerns that the Merger might lead to rationalisation of facilities and/or to providers being less responsive to Commissioner's needs. One Commissioner emphasised that the variety of approaches to treatment is important as different approaches can result in better outcomes for different patients. The Commissioner expressed concern that the Merger might result in a reduction in the variety of treatment approaches available for PD Rehabilitation Services.

194. A Cambian internal document received by the CMA [[✂] – redacted text summarises Cambian comment on the limited number of known female PD providers in the South West of England]. The document identifies [✂][67] indicating that the Parties are likely to be important competitors for each other in this region.

Conclusion

195. The CMA has taken into account all of the evidence described above, in particular the high combined shares of supply and third party concerns. On the basis of this evidence, the CMA believes that there is a realistic prospect of an SLC in the supply of LTMH Rehabilitation Services for female patients, in the treatment-average catchment area of Cygnet *Kewstoke*, in relation to Cambian *Alders Clinic*.

Cambian Alders Clinic (Gloucester)

196. Cambian *Alders* provides PD Rehabilitation Services to female patients (20 beds) in Gloucester. There are [✂] hospital-specific observations to calculate a site-specific 80% catchment area, which is [100-125] miles. This is considerably wider than the treatment-average catchment area of [75-100] miles. On a cautious basis, the CMA has used the treatment-average catchment area of [75-100] miles.

[67] Parties' submissions.

Shares of supply

197. Within the catchment area of Cambian *Alders,* the Parties' combined share of supply in the female PD segment is [40-50]%, with [10-20]% increment.[68] Cygnet has two sites in the catchment area, namely Cygnet *Kewstoke (Knightstone Ward)* in Weston-Super-Mare at 49 miles with 16 beds and Cygnet *Coventry (Arial Court)* in Coventry at 62 miles with a planned 18 beds.

198. The Parties' shares of supply were not materially higher on the basis of specialism combined gender or all-Rehabilitation Services frames of reference. However, applying a stepped catchment analysis (as outlined in paragraph 68) demonstrated that the Parties' combined share is higher in the catchment just under the specialism average which was adopted by the CMA as the primary catchment area, being [50-60]% at [50-75] miles.

199. Although the shares are notably lower at the site-specific 80% catchment area, this is due to the larger catchment area taking in a significant number of competitors in the Midlands. However, the patient / CCG postcode data indicated that the geographic location of that patients is highly asymmetrical, with the majority of patients at Cambian *Alders* are coming from the South West, where there is little provision. Therefore, the CMA does not consider that lower shares at the site-specific catchment mitigate the concerns as a result of higher shares at the narrower average catchment.

Closeness of competition and alternative providers

200. Apart from a small hospital in Bristol at 30 miles, located midway between Cambian *Alders* and Cygnet *Kewstoke* (with seven beds for PD/LTMH or adjusted [0-5]% share of supply in the PD female segment), the Parties are one another's closest competitors by geography. However, PiC/Priory is located at a similar distance the opposite direction in Birmingham at 53 miles with 24 beds (or [20-30]% of the share of supply) and has another site in Walsall at 65 miles with 9 beds for female PD patients (or [5-10]%).[69] Both are in the same direction and a similar distance as Cygnet *Coventry (Ariel Ward)* in Coventry at 62 miles with a planned 12 beds for female PD patients (or [10-20]%).

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[68] The figures listed in this paragraph, and those listed in the subsequent paragraph regarding shares of competitors, do not reflect the revised market shares submitted by the Parties following the identification of additional competition late in the CMA's investigation (as noted in paragraph 84 above). However, the CMA notes that the Parties' combined share remains above 40% even when taking into account all additional competitors.
[69] This bed allocation has been adjusted following third party feedback from third parties.

201. Post-Merger, there would be six remaining providers active within this catchment area, including the Parties. The Parties would be the largest provider in the area, and significantly larger than their next largest competitor, which would be Acadia Group (PiC/Priory) with 33 beds (or [30-40]% share of supply of female PD beds), followed by Elysium and Ludlow Street Healthcare with 11 beds each (or [10-20]%). The remaining two providers, Ocean Community Services and Lighthouse have approximately three beds each (or [5-10]% share of supply).

202. As Cambian *Alders* is within the catchment area of Cygnet *Kewstoke*, the Parties' submissions, third party views and evidence from internal documents summarised above are also relevant to the competitive assessment of Cambian *Alders.*

Conclusion

203. The CMA has taken into account all of the evidence described above (and as set out for Cygnet *Kewstoke*), in particular the Parties' high combined shares of supply and evidence from third parties regarding the importance of proximity in placements, as well as concerns received from third parties. On the basis of this evidence, the CMA believes that there is a realistic prospect of an SLC in the supply of PD Rehabilitation Services for female patients in the treatment-average catchment area of Cambian *Alders,* in relation to Cygnet *Kewstoke (Knightstone Ward)* and Cygnet *Coventry (Arial Court)*.

Cambian Aspen (Rotherham)

204. Cambian *Aspen* has two wards in Rotherham: Cambian *Aspen Clinic* and *Aspen House,* providing female patients with Rehabilitation Services for PD (16 beds) and LTMH (20 beds) respectively.[70] As the CMA has not identified any potential concerns in relation to the Parties' LTMH activities within this area, the analysis set out below is limited to the Parties' PD activities. For Cambian *Aspen Clinic*, there are [✂] hospital-specific observations to calculate a site-specific 80% catchment area, which is [75-100] miles. This matches the female PD treatment-average catchment area, and has been used as the basis for assessment.

[70] Aspen *Clinic* is also referred to as Aspen *Lodge.*

Shares of supply

205. Within the Cambian *Aspen Clinic* catchment area of [75-100] miles, the Parties' combined share of supply in the PD female segment is [30-40]%, with a [10-20]% increment.[71] Cygnet has one site[72] in the catchment area providing female PD, namely Cygnet *Bierley (Bowling Ward)* near Bradford at 41 miles with 20 beds.[73]

206. The Parties' shares of supply were not materially higher on the basis of specialism combined gender or all-Rehabilitation Services frames of reference. However, applying a stepped catchment analysis (as outlined in paragraph 68) demonstrated that the Parties' combined share and increment is significantly higher in the catchment area slightly narrower than the site-specific catchment area, being [50-60]% at [50-75] and [75-100] miles.

Closeness of competition and alternative providers

207. The Cygnet *Bierley* site is located at a similar distance for Cambian *Aspen* as a number of other competitors. While there is only one competitor that is significantly nearer, the much smaller Inmind in Leeds with 6 beds, there are several other providers at a similar distance. Acadia Group (PiC/Priory) has two sites respectively in Ashfield at 37 miles and in Newark and Sherwood at 40 miles with 19 beds (for LTMH and PD) and 5 beds dedicated to PD.

208. Post-Merger, there would be six remaining providers active within this catchment area, including the Parties. The Parties would be the largest provider in the area, and would be nearly double the size of their next largest competitor, Elysium which provides 34 beds (or [10-20]%). The next largest competitors would be Inmind with 22 beds (or [10-20]%) and the Retreat with 20 beds (or [10-20]%).

209. The Parties submitted that competition concerns do not arise in relation to this overlap because there is a level of differentiation between the Parties' facilities. They submit that the specialisms offered at Cygnet *Bierley (Bowling Ward)* are materially different to those offered at the Cambian clinics in Rotherham and Chesterfield (Cambian *Aspen* and *Acer*), meaning that the clinics do not accept patients with the same needs, even though all three serve female PD patients.

[71] The Parties submit a slightly higher figure of [40-50]%.
[72] See endnote.
[73] The combined shares of supply have been updated following responses from competitors.

210. In particular, the Parties submitted that:

   (a) Cygnet *Bierley (Bowling Ward)* offers a highly specialist DBT within a semi-secure hospital environment, and accepts patients with a high level of challenging behaviour and risk towards the upper end of the PD acuity spectrum; and

   (b) Cambian *Aspen Clinic* and *Acer Clinic* treat female patients with PD with less challenging needs, and the Parties argue are generally seen as step down from the Cygnet *Bierley (Bowling Ward)*.

211. The Parties also submitted that no concerns arise because there are at least five remaining providers who compete with the Parties.

212. Multiple Commissioners raised concerns that the Merger may result in the rationalisation of the Parties' services in the area, which would reduce choice for placements and could lead to higher prices and less bargaining power for Commissioners. Commissioners were also concerned that the Merger may mean they need to place patients further away in future. In contrast to the Parties' submissions that they are not close competitors (because of differences in the specialisations that they offer), one Commissioner told the CMA that the Parties' approaches have become more similar recently, as Cambian have added DBT to their approach in the last twelve months. In this respect the CMA also that the Parties' arguments they are not close competitors for female PD are not supported by the CMA's investigation, as outlined in paragraphs 173 to 181.

213. One Commissioner in particular noted that it placed patients at Cambian *Acer* and *Aspen*, as well as Cygnet *Brighouse*,[74] and considered it had only one alternative to the Parties, being InMind in Leicester. This Commissioner raised a concern that the Merger could lead to closure of units, which would have a direct impact on placements and on their ability to assess three potential providers for every placement. This Commissioner was also concerned that a reduction in competition could have a direct impact on the spot rate they would pay on placements.

214. An internal document provided by Cambian [✂] – redacted text refers to Cambian's assessment of the level of competition for specialist PD services in the East Midlands]. This indicates that Cambian does not consider itself to be strongly constrained by competitors in the region.[75]

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[74] Mentioned under its previous provider name, Alpha.
[75] Parties' submissions.

Conclusion

215. The CMA has taken into account all of the evidence described above, in particular the geographical proximity of the Parties' sites, third party concerns, and the relatively few alternatives nearby. On the basis of this evidence, the CMA believes that there is a realistic prospect of an SLC in the supply of PD Rehabilitation Services to female patients in the site-specific 80% catchment area of Cambian *Aspen,* in relation to Cygnet *Bierley (Bowling Ward)*.

Cambian Acer Clinic

216. Cambian *Acer Clinic* provides PD Rehabilitation Services to female patients (28 beds) in Chesterfield. In February 2017, it doubled its capacity by adding an additional 14 beds.[76] There are [✄] hospital-specific observations to calculate a site-specific 80% catchment area, which is [50-75] miles. This is narrower than the treatment-average catchment area of [75-100] miles. On a cautious basis, the CMA has used the site-specific catchment area of [50-75] miles.

Shares of supply

217. Within the Cambian *Acer* site-specific catchment area of [50-75] miles, the combined share of supply in the PD female segment is [70-80]%, with a [20-30]% increment.[77] The only Cygnet site in the catchment area is Cygnet *Bierley* at 54 miles.[78]

Closeness of competition and alternative providers

218. The Parties are not one another's closest competitors by geography. Acadia Group (PiC/Priory) has two closer sites, namely Ashfield at 20 miles with 20 beds (for female patients with LTMH and/or PD) and Newark and Sherwood with five beds for PD patients. Inmind in Leeds at 46 miles with 6 beds is also nearer to Cambian *Acer Clinic* than Cygnet *Bierley*.

219. Post-Merger, there would be three remaining providers active within this catchment area, including the Parties. The Parties would be four times the size of their next largest competitor, Acadia Group (PiC/Priory), which

[76] We expect third party comments therefore may somewhat understate the future competitive conditions in the area, as we did not ask about this explicitly and looked at the historical placement record.
[77] The Parties submit a higher figure of [80-90]]%.
[78] The combined shares of supply have been updated following responses from third parties.

provides 14.5 beds (or [10-20]% of the share of supply of PD female in the catchment area), followed by Inmind with 6 beds (or [5-10]%).

220. As Cambian *Acer* is within the catchment area of Cambian *Aspen,* the Parties' submissions, third party concerns and evidence from internal documents summarised in relation to Cambian *Aspen* above are also relevant to the competitive assessment of Cambian *Acer*.

Conclusion

221. The CMA has taken into account all of the evidence described above (and as set out for Cambian *Aspen*), in particular the high combined shares of supply and third party concerns, and the small number of other providers in the area. On the basis of this evidence, the CMA believes that there is a realistic prospect of an SLC in the supply of PD Rehabilitation Services to female patients in the site-specific 80% catchment area of Cambian *Acer Clinic,* in relation to Cygnet *Bierley*.

Barriers to entry and expansion

222. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.[79]

223. The Parties submitted that barriers to entry for Rehabilitation Services are significantly lower than those in Secure Facilities and provided two examples of new facilities – Cambian *Lodge* [✂] and *Delfryn Lodge* [✂]. The CMA notes there would also be planning and regulatory approvals required in order to open a new site (and therefore that build times alone are likely to underestimate the full time for entry to occur).

224. The Parties' position that barriers to entry are low is not, however, supported by their internal documents, and evidence received from third parties, which indicate that there are substantial barriers to entry to new providers, including:

(a) the requirement for an established reputation and proven track record as Commissioners seek to minimise risk (feedback received from third

[79] *Merger Assessment Guidelines*, from paragraph 5.8.1.

parties in the CMA's market investigation also indicated that Commissioners are more likely to place at a facility with which they have had a good experience in the past);

(b) the availability of clinical expertise and skilled staff (feedback received from third parties in the CMA's market investigation indicated that this can be a particular challenge in certain regions);

(c) the availability of experienced senior management (which again, the CMA's market investigation indicated can be in short supply in some areas); and

(d) material regulatory barriers (the CMA's market investigation indicated this would require significant resources, in particular, to deal with the CQC's monitoring requirements).

225. The CMA therefore does not consider it likely that a new operator could enter and acquire scale such that it would impose a constraint upon the Parties. In its market investigation, the CMA has asked competitors about their plans for entry/expansion (in order to take these plans into account, to the extent relevant, in the local analysis). Competitors have not, however, identified any pipeline sites in the catchment areas considered within this Decision.

226. The CMA therefore does not believe that there is evidence of entry which would be sufficiently likely and timely to constrain the Parties post-Merger.

Countervailing buyer power

227. The Parties submit that they are extremely reliant on NHS referrals and that the NHS has the ability to set high and specific standards of care and strongly negotiates on prices.[80] The Parties suggest that deflators and volume discounts are evidence of this buyer power. Based on the available evidence, the CMA does not believe that this is necessarily evidence of buyer power. While the CMA notes national standards set on quality, the CMA's investigation has indicated that there is competition between providers on service levels which exceed the minimum requirements.

[80] Parties' submissions.

228. In addition, internal documents state that [[✄] – redacted text contains a summary of evidence in internal documents that Cambian receives referrals from a number of Commissioners].[81] A Cambian internal document indicates that [✄][82] The CMA considers that this indicates the Parties are not constrained by any material buyer power, such that buyer power would mitigate the potential SLC identified.

229. Finally, buyer power can only contain suppliers to the extent that there are sufficient alternatives available to the buyer.[83] The CMA has not received any evidence to suggest that the NHS would expand self-supply in response to any loss of competition brought about as a result of the Merger. Even if the NHS were able to exercise some buyer power prior to the merger, its ability to do so may be materially reduced by the Merger.

Third party views

230. The CMA contacted Commissioners and competitors of the Parties, including NHS trusts and private healthcare providers. Many Commissioners raised concerns with the Merger, including that it could lead to an increase in the price or a decrease in the quality of services supplied to the NHS in a number of the relevant product frames of reference.

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

Conclusion on substantial lessening of competition

232. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in relation to the supply of each of the following services, when centering its analysis on each of the following sites:

(a) the supply of LTMH Rehabilitation Services to male patients in the catchment areas of Cygnet Derby, Cambian Storthfields, Cambian The Limes, Cambian Sherwood and Cambian Oaks;

[81] Parties' submissions.
[82] Parties' submissions.
[83] See *Merger Assessment Guidelines*, paragraphs 5.9.2-5.9.3.

(b) the supply of LTMH Rehabilitation Services to female patients in the catchment areas of Cygnet Kewstoke, Cambian Raglan House and Cambian St Teilo; and

(c) the supply of PD Rehabilitation Services to female patients in the catchment areas of Cygnet Kewstoke, Cambian Aspen, Cambian Acer and Cambian Alders.

Decision

233. Consequently, the CMA believes 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 United Kingdom.

234. The CMA therefore believes that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised[84] whilst the CMA is considering whether to accept undertakings[85] instead of making such a reference. UHS has until 28 April 2017[86] to offer an undertaking to the CMA.[87] The CMA will refer the Merger for a phase 2 investigation[88] if UHS does not offer an undertaking by this date; if UHS indicates before this date that it does not wish to offer an undertaking; or if the CMA decides[89] by 8 May 2017 that there are no reasonable grounds for believing that it might accept the undertaking offered by UHS, or a modified version of it

235. The statutory four-month period mentioned in section 24 of the Act in which the CMA must reach a decision on reference in this case expires on 28 April 2017. For the avoidance of doubt, the CMA hereby gives UHS notice pursuant to section 25(4) of the Act that it is extending the four-month period mentioned in section 24 of the Act. This extension comes into force on the date of receipt of this notice by UHS and will end with the earliest of the following events: the giving of the undertakings concerned; the expiry of the period of 10 working days beginning with the first day after the receipt by the CMA of a notice from UHS stating that it does not intend to give the undertakings; or the cancellation by the CMA of the extension.

Andrea Coscelli

[84] Section 22(3)(b) of the Act.
[85] Section 73 of the Act.
[86] Section 73A(1) of the Act.
[87] Section 73(2) of the Act.
[88] Sections 22(1) and 34ZA(2) of the Act.
[89] Section 73A(2) of the Act.

Chief Executive Officer
Competition and Markets Authority
21 April 2017

Endnote

Paragraph 205 of this Decision as issued to the Parties on 21 April 2017 stated that Cygnet *Coventry* is within the catchment area of Cambian *Aspen Clinic*. This is an error and the Cygnet Coventry site in fact sits outside the site-specific catchment area which is used. Paragraphs 205 and 215 have been amended to correct this inaccuracy, which does not affect the substantive analysis of competition in the catchment area of Cambian *Aspen Clinic*.