

**COMPLETED ACQUISITION BY CYGNET HEALTH CARE LIMITED  
AND UNIVERSAL HEALTH SERVICES, INC. OF THE CAMBIAN  
ADULT SERVICES DIVISION OF CAMBIAN GROUP**

**Notice of possible remedies under Rule 12 of the Competition and  
Markets Authority Rules of Procedure<sup>1</sup>**

**Introduction**

1. On 3 May 2017, the Competition and Markets Authority (CMA), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), referred the completed acquisition by Universal Health Services, Inc. (UHS) via its wholly owned subsidiary Cygnet Health Care Limited (Cygnet), of the Cambian Adult Services division (CAS)<sup>2</sup> of Cambian Group plc (the Merger) for further investigation and report by a group of CMA panel members.
2. On 17 May 2017, the CMA made an Interim Order to prevent pre-emptive action which requires UHS and Cygnet to hold the CAS business separate until the inquiry is finally determined.
3. In its provisional findings notified to Cygnet and CAS (the Parties) on 23 August 2017, the CMA provisionally concluded that the Merger may be expected to result in an SLC within the market for the provision of certain hospital-based inpatient rehabilitation services for (i) male patients in the East Midlands and (ii) female patients in the West Midlands. The SLC may be expected to result in adverse effects in terms of prices being higher than they would otherwise be and quality being lower than it would otherwise be.
4. This Notice sets out the actions that the CMA considers it might take for the purpose of remedying, mitigating or preventing the SLC, and any resulting adverse effects identified in the provisional findings.
5. The CMA invites comments on the possible remedies by 8 September 2017.

---

<sup>1</sup> See [Rules of procedure for merger, market and special reference groups: CMA17](#).

<sup>2</sup> Comprising Care Aspirations Developments Limited, Cambian Healthcare Limited and Cambian Care Services Limited.

## Criteria

6. In considering remedy options, the CMA will consider the extent to which different remedy options would be effective in remedying, mitigating or preventing the SLC or any resulting adverse effects that have been provisionally identified. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution, and will evaluate the cumulative impact of any such combination of measures on the SLC or any adverse effects resulting from it.
7. In deciding on a remedy, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it.<sup>3</sup> The CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will then select the least costly and intrusive remedy that it considers to be effective.
8. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.<sup>4</sup>

## Possible remedies on which views are sought

9. Remedies are conventionally categorised as either structural or behavioural.<sup>5</sup> Structural remedies, such as divestiture or prohibition, are generally one-off measures that seek to restore or maintain the competitive structure of the market. Behavioural remedies are normally ongoing measures that are designed to regulate or constrain the behaviour of merger parties.<sup>6</sup>
10. In merger inquiries, the CMA generally prefers structural remedies to behavioural remedies because:<sup>7</sup>
  - (a) structural remedies are likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
  - (b) structural remedies do not normally require monitoring and enforcement once implemented;<sup>8</sup> and

---

<sup>3</sup> Section 36(3) of the Act.

<sup>4</sup> *Merger Remedies: Competition Commission Guidelines (CC8)*, paragraph 1.9. CC8 has been adopted by the CMA board.

<sup>5</sup> CC8, paragraph 2.2.

<sup>6</sup> Behavioural remedies include (i) enabling measures that seek to remove obstacles to competition or stimulate competition, for example preventing merger parties from restricting access to their customers and (ii) measures that control outcomes for example, price caps. CC8, paragraphs 2.2, 2.8 & 2.11.

<sup>7</sup> CC8, paragraph 2.14.

<sup>8</sup> CC8, paragraph 2.14.

- (c) behavioural remedies may not have an effective impact on remedying the SLC and its resulting adverse effects, and may create significant costly distortions in market outcomes.
11. The CMA has provisionally identified structural remedy options involving the sale and transfer of certain of the Parties' operations in the markets in which an SLC has provisionally been found ('overlap sites'), with the aim of restoring the competitive constraint that will be lost as a result of the Merger.
  12. At this stage, and in light of the various dimensions over which competition takes place in the provision of mental health rehabilitation services, the CMA does not consider that behavioural remedies would be effective in addressing the SLC provisionally found. However, the CMA will consider any behavioural remedies that the Parties, or any third party, may propose in response to this Notice.

### ***Structural remedy – divestiture of mental health care operations***

13. The sale and transfer of the Parties' operations in respect of one or more of the overlap sites to a suitable purchaser would prevent an SLC from arising in the relevant markets. The CMA takes the view that such a remedy is capable of providing a comprehensive solution to the SLC and the resulting adverse effects it has provisionally found.

#### *Sites to be divested*

14. The CMA will consider which sites need to be divested in each of the East and West Midlands in order to remedy the SLC it has provisionally found.
15. In the East Midlands, the CMA provisionally found that an SLC was expected to arise in the provision of male long-term mental health (LTMH) rehabilitation services. The CMA considers that an effective divestiture remedy to this SLC would require divestiture to a suitable purchaser of the Parties' male LTMH operations at one or more of the following sites.
  - (a) CAS: Storthfield House, Sherwood House, The Limes, The Oaks and St Augustine's;
  - (b) Cygnet: Derby and Lodge Brighthouse.
16. In the West Midlands, the CMA provisionally found that an SLC was expected to arise in the provision of female LTMH rehabilitation services. The CMA considers that an effective divestiture remedy to this SLC would require divestiture to a suitable purchaser of the Parties' female LTMH operations at either of the following sites:

(a) CAS: Raglan House;

(b) Cygnet: Coventry.

*Composition of the divestiture package*

17. To be effective in remedying the SLC, any divestiture package would need to be appropriately configured to be attractive to potential purchasers and to enable the purchaser to operate effectively as an independent competitor in the markets where an SLC has provisionally been found.
18. The CMA's current view is that an effective divestiture package would need to include (but may not be limited to) the following:
  - (a) Freehold site or (if leasehold) rights to the lease.
  - (b) Physical facilities related to the provision of the relevant mental health services provided at the site.
  - (c) Transfer of skilled staff.
  - (d) Transfer of existing customer contracts and the rights to fulfil these.
  - (e) Transfer of existing contracts with clinical staff including visiting consultants.
  - (f) Transfer of existing supplier contracts.
  - (g) Rights to use the relevant site or ward name (without the name of the Parties).
  - (h) Access to relevant customer and patient data and patient records for the purposes of ensuring continuity of treatment.
  - (i) Rights to receive services and utilities currently being provided at the divested sites, such as gas, electricity, building access and services etc.
19. In addition, it may be necessary for the Parties to provide certain support services on a transitional basis, depending on the requirements of the purchaser, for example,
  - (a) access to relevant training for staff;
  - (b) provision of central support services such as finance, IT and procurement;  
and

- (c) access to any database or software, for example related to clinical management of patients.
20. The CMA welcomes views in relation to the specification of the proposed structural remedy, and any implementation issues that might arise, particularly on the following areas:
- (a) Will divestiture be an effective remedy to remedy the SLC provisionally found and any resulting adverse effects?
  - (b) Which LTMH operations should be divested by the Parties to address the SLC provisionally found, and any resulting adverse effects? Is the list of the sites in scope for divestment, mentioned in paragraphs 15 and 16 comprehensive?
  - (c) Should the Parties be allowed to choose which sites are to be divested?
  - (d) What practical issues may arise if the divestiture involves separating out certain wards from a larger facility, and how could these issues be addressed?
  - (e) Is the composition of the divestiture package mentioned in paragraph 18 above sufficiently comprehensive? Should anything be added to or deleted from this list to enable the purchaser to operate the divested sites as an effective competitor?
  - (f) What transitional arrangements (see paragraph 19), if any, should be put in place, and what should be the duration of these arrangements?
  - (g) What additional measures, if any, would be required to make the divested sites a viable stand alone business in the relevant area for example, transfer of any senior managerial staff, further transitional measures, divestiture of additional sites etc?
  - (h) What additional measures, if any, would be necessary to ensure high quality of patient care at the divested sites?

*Identification of a suitable purchaser(s)*

21. The CMA will need to satisfy itself that a prospective purchaser is independent of the Parties, has the necessary experience, financial and reputational capability to compete and is committed to competing in the

provision of mental health rehabilitation services, and that the remedy will not create further competition concerns.<sup>9</sup>

22. A suitable purchaser should be able to demonstrate an ability to provide high quality of care to the patients at the divested sites. The CMA will expect the purchaser already to have or be able to obtain all necessary licences and consents from any regulatory or other authority to purchase and operate the divested sites.
23. The CMA welcomes views in relation to the identification of a suitable purchaser and specifically invites feedback on:
  - (a) the profile of a suitable purchaser, for example, whether the CMA should specify that the purchaser is a larger provider with national coverage or a local provider with local knowledge; trade buyer or a private equity firm;
  - (b) whether the purchaser needs to have experience of providing mental health, in particular mental health rehabilitation services, in the UK or in the areas where an SLC has provisionally been found;
  - (c) whether there should be a single purchaser of all of the divested sites, either in the separate areas where an SLC has been provisionally found, or, where multiple sites are required to be divested in a single area where we have provisionally found an SLC;
  - (d) which competitors would not be suitable purchasers for the divested sites due to competition concerns or any other reason; and
  - (e) regulatory approvals that will be required for a purchaser to acquire and operate the divested sites.

#### *Effective divestiture process*

24. The CMA welcomes views on the appropriate timescale for achieving a divestiture and what procedural safeguards would be needed to minimise the risk associated with this remedy option.

#### *Costs*

25. The CMA welcomes views in relation to the proportionality of the proposed structural remedy, including on the likely cost of implementing and (if required), monitoring the proposed structural remedy.

---

<sup>9</sup> See [CC8](#), paragraph 3.15.

### ***Other remedy options***

26. The CMA will consider any other practicable remedies that the Parties, or third parties, may propose in order to address the SLC and any resulting adverse effects, including any behavioural remedies that could be required in a supporting role to safeguard the effectiveness of the proposed structural remedy.

### **Relevant customer benefits**

27. The CMA will have regard to the effects of remedial action on any relevant customer benefits (with relevant customers being CCGs, local authorities and patients in this case) within the meaning of section 30 of the Act arising from the merger situation. Such benefits might comprise lower prices, higher quality or greater choice of services or greater innovation in relation to such services.
28. A benefit is only a relevant customer benefit if the CMA believes that:
- (a) the benefit has accrued to customers in the UK as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and
  - (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.<sup>10</sup>
29. The CMA so far is not aware of any such relevant customer benefits or benefits for the patients arising from the Merger.
30. The CMA welcomes views supported by evidence on the nature of any relevant customer or patient benefits, and on the scale and likelihood of such benefits and the extent to which these are preserved by the remedies we are considering.

### **Next steps**

31. Interested parties are requested to provide any views in writing, including any practicable alternative remedies they wish the CMA to consider, by 8 September 2017.<sup>11</sup>
32. A copy of this notice will be posted on the [CMA website](#).

---

<sup>10</sup> Section 134 of the Act.

<sup>11</sup> This notice of possible actions to remedy the SLC and any resulting adverse effects is given having regard to the provisional findings announced on 23 August 2017. The main parties have until 15 September 2017 to respond to the provisional findings. The CMA's findings may alter in response to comments it receives on its provisional findings, in which case the CMA may consider other possible remedies, if appropriate.