

**Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 16 October 2018**

**Anticipated acquisition by CareTech Holdings plc of Cambian Group plc**

We refer to your email and accompanying notes dated 10, 15, 16, 17 and 18 October 2018 requesting that the CMA consents to derogations to the Initial Enforcement Order of 16 October 2018 (the **Initial Order**). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, CareTech and Cambian are required to hold separate the Cambian business from the CareTech business and refrain from taking any action which might prejudice a reference under section 22 or 33 of the Act or impede the taking of any remedial action following such a reference. After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, CareTech and Cambian may carry out the following actions, in respect of the specific paragraphs:

**1. Paragraph 7(l) of the Initial Order**

The CMA understands that CareTech requires certain information on Cambian to comply with its regulatory obligations. The CMA consents to [✂]:

- obtaining reports from Cambian regarding any serious and/or dangerous health and safety incidents, including any inspections carried out at the Cambian facilities by the Care Quality Commission (**CQC**), Care Inspectorate Wales (**CIW**), Care Inspectorate Scotland (**CIS**), Health Inspectorate Wales (**HIW**), the Office for Standards in Education, Children's Services and Skills (**Ofsted**), HM Inspectorate for Education and Training in Wales (**Estyn**), Children's Commissioner for England, the Children's Commissioner for Wales, the Health & Safety Executive (**HSE**) (each a **Regulator**, and together, the **Regulators**) and their overall recommendations and implications; as well as any steps being taken by Cambian to manage the incidents; and
- in particular, being informed of any such incidents, especially if this may result in any fines or penalties being imposed on a facility for which CareTech will be liable as parent company and/or which might lead to significant reputational damage to Cambian; and, in response to any such incidents, taking action to:

(i) escalate the incident to the Board of Directors and, (ii) communicate with the Compliance team, and the CareTech Care Governance and Safeguarding Committee (the **Safeguarding Committee**).

In the event that a serious and/or dangerous incident needs to be communicated to the CareTech Board of Directors, Compliance team or the Safeguarding Committee, CareTech will:

- notify the CMA in parallel on a confidential basis that such incident reporting has taken place;
- ensure that communication of any Cambian commercially-sensitive information is strictly-limited to that necessary for CareTech to understand the nature of the incident, Cambian's response to manage the incident and to form a view on the necessary action required; and
- ensure that those CareTech individuals on the CareTech Board of Directors, Compliance team and the Safeguarding Committee who need to receive access to Cambian information for these purposes, shall enter into appropriate confidentiality and non-use undertakings in a form acceptable to the CMA and firewalls will be put in place to prevent any other CareTech employee from accessing Cambian information as set out in writing to the CMA.

Notwithstanding any immediate actions that the Regulators would require to be carried out, in the event that CareTech becomes aware of a deficiency that creates a risk to patient or staff safety, and CareTech is concerned that Cambian is not taking steps to address the issue, CareTech will request a further derogation from the Initial Order to commission any action to assess and remedy these issues.

[X] will enter into appropriate confidentiality and non-use undertakings in a form acceptable to the CMA and firewalls will be put in place to prevent any other CareTech employee from accessing Cambian information as set out in writing to the CMA.

In respect of the Safeguarding Committee of CareTech:

- a. Materials will not be provided to [X]. [X] shall be required to leave the meeting room when discussions relating to Cambian take place. The written minute of discussions relating to Cambian shall be provided in a separate schedule which will not be provided to [X] whilst the Initial Order is in force.
- b. The Committee members shall enter into appropriate confidentiality and non-use undertakings in a form acceptable to the CMA and firewalls will be put in

place to prevent any other CareTech employee from accessing Cambian information as set out in writing to the CMA.

## **2. Paragraph 5(a), 7(a), and 7(l) of the Initial Order**

The CMA understands that certain changes to Cambian's banking facilities are required post-completion as the financing of Cambian will be restructured. The CMA consents to Cambian terminating [X] and, to the extent necessary, enabling Cambian and its subsidiaries to gain access to CareTech's group banking facility agreement as a borrower and guarantor, provided that any Cambian data that transfers to CareTech for these purposes is ring-fenced and only accessible by Cambian personnel and three designated CareTech personnel [X], who will sign non-disclosure agreements in a form approved by the CMA. Should the transaction be prohibited or remedies accepted, any records or copies (electronic or otherwise) of such information that have passed from Cambian to CareTech, wherever they may be held, must be returned to Cambian or be destroyed.

As part of the safeguards for this derogation:

- any Cambian information shared with CareTech will be limited to that strictly necessary for the purposes of ensuring sufficient funding is made available to Cambian;
- the three identified treasury individuals involved will be subject to a non-disclosure agreement in the form approved by the CMA;
- CareTech will commit to make funding to Cambian in line with its pre-merger business plans as required by the Initial Order;
- the amount of funding and terms available from CareTech, including the conditions on which Cambian can access that funding, will be at least as favourable to Cambian as [X]; and
- prior to such a decision being communicated to Cambian, CareTech will inform the CMA of any instances in which it is proposed that a funding request from Cambian would be denied.

## **3. Paragraphs 7(a), 7(g) and 7(l) of the Initial Order**

The CMA understands that it is necessary for CareTech's insurance cover to be extended to Cambian post-completion to ensure that CareTech complies with its existing insurance policies. During the specified period, the CMA consents to:

- extending [X] insurance coverage to Cambian as wholly owned subsidiaries; and

- [REDACTED] of CareTech obtaining information in relation to Cambian's procedures for reporting actual or potential claims post-Completion, in order to ensure that Cambian continues to comply with its insurance obligations (for example, information about potential claims). [REDACTED] will enter into appropriate confidentiality and non-use undertakings in a form acceptable to the CMA and firewalls will be put in place to prevent any other CareTech employee from accessing Cambian information.

For the avoidance of doubt, [REDACTED]. As such, the inclusion of the Cambian business in [REDACTED] will have no influence upon the commercial direction of the Cambian business during the term of the Initial Order.

Furthermore, should the CMA require CareTech to divest all, or part, of the Cambian business, any records or copies (electronic or otherwise) of business secrets, knowhow, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed, unless required in connection with an insurance claim or pursuant to a regulatory obligation.