

**DEROGATION LETTER IN RESPECT OF INITIAL ENFORCEMENT
ORDER ISSUED PURSUANT TO SECTION 72(2) ENTERPRISE ACT
2002**

**Anticipated acquisition of GHG Healthcare Holdings Limited by
Circle Health Holdings Limited**

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 20 December 2019.

We refer to your letter dated 26 November 2019 requesting that the CMA consents to derogations to the Initial Enforcement Order of 20 December 2019 (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, Circle Health Holdings Limited and Circle Health 4 Limited ("**Circle**") are required to hold separate the Circle business from the business of GHG Healthcare Holdings Limited ("**GHG**") and its subsidiaries and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference. GHG is the parent company of BMI Healthcare Limited. GHG and its subsidiaries, including BMI Healthcare Limited are collectively referred to in this derogation as "**BMI**".

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, Circle may carry out the following actions, in respect of the specific paragraphs of the Initial Order:

1. Financing - Paragraph 4(a), 5(a), and 5(l) of the Initial Order

The CMA understands that financing of Circle and BMI will need to be restructured as at Completion as BMI's current financing arrangements will be terminated. To ensure BMI has sufficient funds for its general working capital requirements and budgeted capital expenditure, BMI will need to access funds under Circle's financing arrangements. Based on the information provided to the CMA, the CMA understands that such a derogation would not prejudice a CMA reference or impede the taking of

any action which may be justified by the CMA's decision on a reference. On this basis, the CMA consents to:

- (a) terminating and refinancing BMI's existing financing arrangements (including eliminating any inter-company balances owed to the vendor group);
- (b) enabling BMI/GHG Healthcare Holdings Limited and its relevant subsidiaries (whether directly, or indirectly through the Circle entity which will acquire BMI, Circle Health 4 Limited) to gain access to a revolving credit facility arranged by Ares and provided by Barclays for the purposes of funding BMI's general working capital and maintenance, a capex facility arranged by Ares and to a GE Healthcare finance leasing arrangement (and a bridging capex facility arranged by Ares until the GE Healthcare finance leasing arrangement becomes available);
- (c) enabling material trading subsidiaries and intermediate holding company subsidiaries within the BMI group to provide the guarantees and all asset security in relation to the debt facilities;
- (d) allowing an alternative target group company or Circle to replace GHG Tenant 2 Limited as guarantor of any property and/or finance leases entered into by the target group companies, as appropriate;
- (e) permitting repayments under the new financing arrangements, including the payment of interest as required;
- (f) permitting the relevant obligors to make pre-payments to Ares in connection with any asset disposal as contemplated in the Ares financing documentation; and
- (g) BMI providing certain financial information to Circle to enable Circle to create consolidated financial statements to be provided to Ares, Barclays and GE Healthcare in connection with Circle's financing arrangements and for covenant compliance purposes. For the avoidance of doubt, financial information provided by Circle to Ares, Barclays and GE Healthcare will be aggregated and consolidated so that financial information of BMI is not discernible.

This derogation is granted pursuant to the following conditions:

- (a) Circle will ensure that it makes funding available to BMI in line with its pre-merger business plan and/or forecasts (to the extent that these exist or alternatively in accordance with BMI's existing practice);
- (b) funding will be made available by Circle to BMI on arms-length terms;
- (c) prior to any decision being communicated to BMI that a funding request from BMI that falls outside its pre-merger business plan or forecasts would be denied, Circle will inform the CMA before any such decision is communicated to BMI;
- (d) in respect of the proposed information sharing (paragraph 1(g) above), the CMA consents to the derogation subject to the following conditions:
- (i) the BMI financial information shared with Circle will be in a template agreed with the CMA;
 - (ii) the BMI financial information will only be shared with [X] (Finance Director, Circle) and [X] (Finance Manager, Circle);
 - (iii) the two Circle identified individuals (and any other employees subject to this derogation) will enter into non-disclosure agreements, in a form agreed with the CMA;
 - (iv) no further changes to the Circle personnel covered by this derogation are permitted without consent from the CMA, such consent will include written consent (including via email);
 - (v) Circle will also ensure that firewall measures are put in place to prevent any other Circle employee from accessing this BMI information, including the following provisions (collectively, the "Firewalls" safeguard):
 - information relating to reports from BMI shall be kept entirely separate from, and not be combined or consolidated with documents containing Circle information (with the exception of the consolidated financial statements required to be provided to Ares, Barclays and GE Healthcare);
 - the two Circle individuals identified (and any other employees subject to this derogation) will be provided with a specific email account to receive the BMI information, with necessary restrictions to prevent unauthorised access; and
 - all documents containing BMI information which are received in the context of this derogation will be password protected, and the

passwords will be known only to the designated individual(s) entitled to access the BMI information in question.

For the avoidance of doubt, BMI's existing bank accounts will remain in place whilst the Order remains in place.

2. Regulatory compliance - Paragraphs 4 and 5 of the Initial Order

The CMA understands that at Completion, Circle will, as the ultimate holding company, assume oversight of the regulatory compliance and safety of services provided by BMI and will bear the financial and reputational consequences of failures by BMI. Subject to safeguards, the CMA considers that for governance purposes Circle requires appropriate oversight of BMI's compliance with regulatory requirements of any regulator and/or professional body applicable to provision of goods and services by BMI and BMI staff (each a "**Regulator**"). Based on the information provided to the CMA the CMA understands that such a derogation would not prejudice a CMA reference or impede the taking of any action which may be justified by the CMA's decision on a reference. On this basis, the CMA consents to:

[X] (Circle's Medical Director) and [X] (Circle's Head of Governance and Quality) to receive:

- (a) papers and records relating to BMI's compliance with the requirements of Regulators, including (but not limited to) the health and safety RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences) report and Care Quality Commission, Healthcare Improvement Scotland and Health Inspectorate Wales statutory requirements and notifications;
- (b) a monthly report showing the number of complaints received at each BMI site, including a breakdown of complaints closed out, outstanding and requiring escalation;
- (c) a copy of BMI's Risk Register and regulatory notification and compliance tracker on a monthly basis;
- (d) steps and responses taken in response or in respect of the management of any such matters; and
- (e) if necessary, to escalate any serious regulatory breaches or incidents of serious patient harm to [X] (Circle's CEO).

This derogation is granted pursuant to the following conditions:

- (a) This request will not lead to integration between the businesses.
- (b) Circle will also ensure that firewall measures are put in place to prevent any other Circle employee from accessing this BMI information, including the "Firewalls" safeguard.
- (c) [X] and [X] (and any other employees subject to this derogation) will sign a suitable confidentiality undertaking in a form to be agreed with the CMA.
- (d) No further changes to the personnel covered by this derogation are permitted without consent from the CMA, such consent will include written consent (including via email).
- (e) In the event that Circle becomes aware of any serious regulatory breaches or incidents of serious patient harm through receipt of the general reporting information which are required to be reported to [X] (Circle's CEO), Circle will ensure that:
 - (i) it notifies the CMA in parallel that a serious regulatory breach or incident of serious patient harm has occurred and is required to be reported to [X];
 - (ii) communication of any BMI information is strictly-limited to that necessary for Circle to understand the nature of the breach/incident; and
 - (iii) [X] enters into an NDA in a form to be agreed with the CMA.

3. Incident reporting - Paragraphs 4 and 5 of the Initial Order

The CMA understands that incidents at BMI may result in fines or penalties being imposed on a BMI facility, and cause serious financial and reputational risks for Circle as the ultimate parent company. The CMA considers that a failure to deal effectively and appropriately with any concerns that arise in this area could cause harm to patients and/or staff and could significantly damage the reputations of BMI and Circle. Based on the information provided to the CMA the CMA understands that such a derogation would not prejudice a CMA reference or impede the taking of any action which may be justified by the CMA's decision on a reference. To ensure that there is continuity with BMI's existing procedures for the escalation of serious incidents, the CMA consents to:

To the extent required, [X] (Circle's Medical Director) and [X] (Circle's Head of Governance and Quality) to:

- (a) be informed of and obtain reports regarding the following:
 - (i) any serious incidents affecting patients (as defined in the NHS Serious Incident Framework 2015 as amended or updated from time to time which framework shall be deemed to also apply to non-NHS patients); and/or
 - (ii) serious health and safety incidents; and/or
 - (iii) notifiable data or cybersecurity breaches; and/or
 - (iv) any notifications either required to be made to (or received from) any Regulator in respect of any incident; and/or
 - (v) complaints, claims and incidents affecting the safety or safeguarding of patients, staff and the safe provision of goods and services to patients; and/or
 - (vi) any inspections or audit of any Regulator carried out at the BMI sites and any notifications, recommendations and implications arising from such inspections or audits; and/or
 - (vii) steps and responses taken in response or in respect of the management of any such matters;
- (b) if necessary, escalating the Incident to Circle's CEO and Circle's Data Protection Officer.

This derogation is granted pursuant to the following conditions:

- (a) This request will not lead to integration between the businesses.
- (b) Circle will also ensure that firewall measures are put in place to prevent any other Circle employee from accessing this BMI information, including the "Firewalls" safeguard.
- (c) [X] and [X] (and any other employees subject to this derogation) will sign a suitable confidentiality undertaking in a form to be agreed with the CMA.
- (d) No further changes to the personnel covered by this derogation are permitted without consent from the CMA, such consent will include written consent (including via email).

- (e) Circle will notify the CMA in parallel on a confidential basis that such incident reporting has taken place;
- (f) Communication of any BMI commercially-sensitive information is strictly limited to that necessary for Circle to understand the nature of the incident, BMI's response to manage the incident, and to form a view on the necessary action required; and
- (g) In the event that an incident report needs to be escalated to Circle's CEO ([REDACTED]) and Circle's Data Protection Officer ([REDACTED]), Circle shall ensure that:
 - (i) it notifies the CMA in parallel that an incident is required to be reported to [REDACTED] and [REDACTED];
 - (ii) communication of any BMI information is strictly-limited to that necessary for [REDACTED] and [REDACTED] to understand the nature of the incident; and
 - (iii) [REDACTED] and [REDACTED] enter into an NDA in a form to be agreed with the CMA.

4. Cash flow and financial information (Governance) – Paragraph 5(l) of the Initial Order

The CMA understands that for governance purposes and to ensure that BMI's business is adequately funded, Circle requires access to certain high-level financial information. Based on the information provided to the CMA the CMA understands that such a derogation would not prejudice a CMA reference or impede the taking of any action which may be justified by the CMA's decision on a reference. To ensure sufficient funding is made available and to provide for governance oversight, the CMA consents to:

- (a) [REDACTED] (Circle's Finance Director) and [REDACTED] (Circle's Finance Manager) to receive, subject to the safeguards set out below, certain high-level financial information about BMI, being:
 - (i) BMI's monthly consolidated management accounts, including profit and loss (actual and budget), monthly cash flow (actual and budget), twelve-month rolling cash flow forecast and 16 weekly forward cash flow forecast, and monthly balance sheet.
- (b) Circle's Board of Director's to receive BMI's monthly consolidated management accounts (consolidating BMI's and Circle's financials), in a template form to be agreed with the CMA.

This derogation is granted pursuant to the following conditions:

- (a) Such information will be on a consolidated, non-site-specific basis only. The information requested for this purpose would not involve sharing prices or margins of specific sites or revenue types (e.g. NHS vs PMI vs self-funded), granular cost data, or management commentary.
- (b) Such financial information will be in template form which is subject to CMA approval and such information will be made available to the CMA on request.
- (c) Circle will ensure the Firewall safeguard measures are put in place to prevent any other Circle employee from accessing this BMI information (except that the BMI consolidated accounts shared pursuant to (b) above may be consolidated with Circle information when provided to the Board of Directors).
- (d) All employees subject to this derogation will sign suitable confidentiality undertakings in a form to be agreed with the CMA.
- (e) No further changes to personnel are permitted without consent from the CMA, such consent will include written consent (including via email).

5. Financial information (reporting obligations) - Paragraph 5(I) of the Initial Order

The CMA understands that in order to comply with its financial and tax reporting obligations Circle will require access to certain BMI financial information. Based on the information provided to the CMA the CMA understands that such a derogation would not prejudice a CMA reference or impede the taking of any action which may be justified by the CMA's decision on a reference. To ensure Circle is able to comply with its financial reporting and tax obligations, the CMA consents to BMI providing to Circle:

- (a) such information as is required for the preparation of Circle's statutory reporting and filings or dealings with its accountants and auditors, its financial and legal advisers, and/or HMRC. This includes information necessary to prepare consolidated group accounts; and
- (b) information required to be provided to Circle's shareholders for auditing or accounting purposes.

This derogation is granted pursuant to the following conditions:

- (a) Such financial information will be provided to [X] (Circle's Finance Director) and [X] (Circle's Finance Manager) in template form which is subject to CMA approval and such information will be made available to the CMA on request.
- (b) Circle will ensure the Firewall safeguard measures are put in place to prevent any other Circle employee from accessing this BMI information, except that it is acknowledged that BMI information will need to be consolidated with Circle information where required in order to comply with financial reporting and tax obligations.
- (c) All employees subject to this derogation will sign suitable confidentiality undertakings in a form to be agreed with the CMA.
- (d) No further changes to personnel are permitted without consent from the CMA, such consent will include written consent (including via email).

6. Integration planning information - Paragraph 5(l) of the Initial Order

The CMA understands that in order to plan for an efficient integration post CMA investigation it will be necessary for Circle to access certain non-commercially sensitive information. Based on the information provided to the CMA the CMA understands that such a derogation would not prejudice a CMA reference or impede the taking of any action which may be justified by the CMA's decision on a reference. To allow for efficient integration after the Initial Order is lifted, the CMA consents to the individuals listed in Annex 1 to:

- (a) have discussions with BMI staff employed in corporate functions in order to understand BMI's current payroll, HR, IT and accounting systems and processes; and
- (b) obtain information required in respect of group-wide payroll, HR, IT and accounting functions of BMI, which would allow Circle to plan for the integration of those systems with Circle's own payroll, HR, IT and accounting functions, including all group-wide policies in relation to these functions; and
- (c) obtain information such as system and process maps, IT system details, and the configuration of BMI's IT system (including the extent of bespoke aspects involved).

This derogation is granted pursuant to the following conditions:

- (a) such information would not include any commercially-sensitive or confidential information of BMI such as information on specific BMI patients or current or proposed future BMI prices and/or any commercial strategy and would exclude any information relating specifically to BMI's sites in Birmingham, Bath or Reading;
- (b) the derogation requested does not extend to any integration, but only to information exchange necessary to facilitate the development of functional integration models and plans;
- (c) all employees subject to this derogation will sign suitable confidentiality undertakings in a form to be agreed with the CMA;
- (d) no further changes to the personnel covered by this derogation are permitted without consent from the CMA, such consent will include written consent (including via email);
- (e) Circle will ensure the Firewall safeguard measures are put in place to prevent any other Circle employee from accessing this BMI information; and
- (f) Circle will provide the CMA, on request, with access to the minutes of any integration planning meetings which take place.

7. Insurance – Paragraphs 5(a), 5(g) and 5(l)

In order to ensure that satisfactory insurance policies are put in place for BMI, the CMA consents to: (i) Circle's Director and Officer insurance coverage being extended to cover BMI's wholly owned subsidiaries; and (ii) [X] (Circle Legal Counsel) having access to:

- (a) an overview of any key terms on renewal which differ from those provided by BMI's existing policies (including any deviation as to the length of policy period, premium, or coverage); and
- (b) a summary of the term and termination provisions of the renewed policies and any commitments as regards future renewals.

This derogation is granted pursuant to the following conditions:

- (a) [X] (and all other employees subject to this derogation) will sign suitable confidentiality undertakings in a form to be agreed with the CMA; and

- (b) with the exception of Director & Officer insurance, BMI policies will remain in place and will be placed and maintained separately from Circle's insurances.

8. Delegated authority - Paragraph 4, 5(a) and 5(l) of the Initial Order

The CMA understands that to ensure that BMI can operate in the ordinary course of business and is maintained as a going concern BMI requires delegated authority for day to day and ordinary course expenditure. The CMA consents to the following:

- (a) a) BMI's authorisation levels will remain as set out in Annex 2, subject to the requirements in (b) below;
- (b) b) [X] (BMI's CEO) will be required to notify [X] (Circle's Finance Director) in advance of the following, for review and either approval (with such approval to not be unreasonably withheld) or veto by Circle:
- (i) any unbudgeted capital expenditure over the amount of £[X];
 - (ii) any unbudgeted operating expenditure over the amount of £[X];
 - (iii) entering into any new customer/supplier contracts with a value of over £[X] (excluding [X], or renewals with an existing customer or supplier);
 - (iv) entering into:
 - any financial settlements in respect of litigation or dispute resolution proceedings (including clinical negligence claims) which exceed the amount of any financial provision made in respect of those matters, or, where there is not applicable financial provision, which have a value of over £[X];
 - any financial settlements in respect of redundancy payments with a value of over £[X];
 - entering into an agreement with a prospective employee with a base salary of £[X] or more per annum;
 - any settlement of liability or similar agreement relating to property matters in excess of £[X]; and
 - entering into any contracts with uncapped liability, or with a term longer than 12 months and a value above £[X] per annum (excluding renewals with an existing customer or supplier).

- c) The review by Circle of the proposed expenditure of BMI may require access by [X] (Circle's Finance Director) to commercially sensitive information of BMI.

This derogation is granted pursuant to the following conditions:

- (a) All employees subject to this derogation will sign suitable confidentiality undertakings in a form to be agreed with the CMA;
- (b) Circle will ensure the Firewall safeguard measures are put in place to prevent any other Circle employee from accessing this BMI information;
- (c) the CMA will be provided with prior notification if Circle intends to exercise its right to veto expenditure proposed by BMI, and is provided with reasons for any proposed veto; and
- (d) the thresholds are subject to review and potential amendments by the CMA.

No changes to personnel related to any of the above derogations are permitted without consent from the CMA, such consent will include written consent (including via email).

Richard Romney

Director, Mergers

24 December 2019

Annex 1 – Integration planning – designated individuals

Name	Title	Integration planning role
[X]	Chief Commercial Officer, Circle	Project Management Office – Integration Lead
[X]	Chief Information Officer, Circle	Project Management Office – IT Lead
[X]	Integration Project Manager, Circle	Project Management Office - Project Manager
[X]	Commercial Financial Analyst, Circle	Project Management Office - Integration Modeller
[X]	Data Analytics Lead, Ribera	Project Management Office – Integration Lead
[X]	Chief Innovation and Information Officer, Ribera	Project Management Office – IT Strategy Lead
[X]	Head of IT, Ribera	Project Management Office – IT integration manager
[X]	Integration Project Manager, Ribera	Project Management Office – Integration Project Manage
[X]	Data Analyst, Ribera	Project Management Office – Integration Modeller

Annex 2 – BMI authorisation levels [~~X~~]