

Completed acquisition by Circle Health Holdings Limited of BMI Healthcare Limited

Summary of the CMA's decision on relevant merger situation and substantial lessening of competition

ME/6864/19

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

SUMMARY

1. On 8 January 2020, Circle Health Holdings Limited (**Circle**) acquired all the issued share capital of GHG Healthcare Holdings Limited (**GHG**), the indirect parent company of BMI Healthcare Limited (collectively '**BMI**'), (the **Merger**). Circle and BMI are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Circle and BMI is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; 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. In addition, the CMA considers that the increase in Centene Corporation's (**Centene**) shareholding in Circle (and thus the merged entity) to [X] may have resulted in Centene being able to exercise material influence over the merged entity, and therefore in the creation of a further relevant merger situation.
4. Circle is a provider of elective care services to patients funded by the National Health Service (**NHS**) (**NHS funded patients**) and privately funded patients in the UK. It currently operates two private hospitals in Bath and Reading, with plans to open a third hospital in Birmingham in June 2020. It also operates Circle Integrated Care, which delivers integrated care services in relation to

musculoskeletal (**MSK**) conditions and dermatology to NHS funded patients, and Circle Rehabilitation, which provides rehabilitation services.

5. BMI currently operates 52 hospitals and clinics throughout the UK, providing elective care services to NHS funded patients and privately funded patients.
6. Centene has a controlling interest in The Practice Services Limited and a network of companies holding primary care contracts (together '**TPG**'), which provide primary care community services to NHS funded patients. TPG has a network of eighteen General Practice (**GP**) surgeries and also operates 24 community ophthalmology centres across England, as well as a community dermatology centre in Ramsgate.
7. Consistent with its general approach to the counterfactual at Phase 1, the CMA has considered the effect of the Merger compared with the most competitive counterfactual, providing that it considers that situation to be a realistic prospect. The CMA therefore considered the impact of the Merger against the pre-Merger conditions of competition, taking into account the opening of Circle's hospital in Birmingham.
8. HCA Healthcare UK (**HCA**) is also planning to open a hospital in Birmingham (on the Queen Elizabeth Hospital Birmingham campus) in [REDACTED] 2022. Given the earlier stage of development of this hospital and the uncertainty of its impact on competition in Birmingham, the CMA has on a cautious basis assessed HCA's proposed entry in Birmingham in the competitive assessment, rather than incorporating it into the counterfactual.
9. As part of its assessment, the CMA has taken into account the fact that private hospitals have effectively put their entire hospital capacity temporarily under the control of the NHS to deal with the Coronavirus (COVID-19) outbreak, which in particular may delay the planned opening of Circle's and HCA's hospitals in Birmingham.

Private hospital medical services

10. Healthcare services in the UK can broadly be divided into primary, secondary and tertiary care. Primary care services are usually the first point of contact for patients seeking care, such as a general practitioner. Secondary care services include hospitals, day case units, community care centres, and specialist doctors. Tertiary care refers to further highly specialised treatment services which often utilise specialised equipment, eg neurosurgery.
11. Secondary care includes hospital services or acute care, where a patient receives active but short-term treatment, as opposed to longer term care or

chronic care. Private Hospital Medical Services (**PHMS**) form part of these secondary care services.

12. The Parties overlap in the supply of PMHS in Reading and Bath, and will overlap in the supply of these services in Birmingham. In their hospitals, the Parties supply PMHS to inpatients, outpatients and day-case patients (**types of care**) in almost all clinical specialties. The Parties provide PMHS to NHS funded patients and privately funded patients (which includes patients who fund the services themselves (**self-pay patients**) and patients funded by private medical insurance (**PMI**) (**PMI patients**)).
13. The CMA has assessed the impact of the Merger on the supply of PHMS with further segmentation between (i) each type of care, (ii) different specialties, and (iii) the source of funding (distinguishing between NHS and privately funded patients). The CMA has addressed differences in competition for self-pay patients and PMI patients in the competitive assessment.
14. In line with previous CMA decisions and the evidence seen by the CMA in this case, including a catchment area analysis and the Parties' internal documents, the CMA has assessed the effects of the Merger on the supply of PHMS on a local basis. The CMA has also assessed whether the Merger could lead either of the Parties to increase their prices for PMI patients nationally, as a result of a reduction in local competition.
15. The evidence seen by the CMA consistently showed that the location of providers strongly influences the extent to which they compete with each other. This included the analysis of catchment areas from which each hospital's patients are drawn, third party views and internal documents.
16. The various metrics for shares of supply within a given geographic area do not reflect the relative location of providers and hence the level of competitive interaction between hospitals. Given that more direct evidence of the strength of competition (including internal documents) was available, the CMA has not placed significant weight on shares of supply in this case.

Private Hospital Medical Services in Reading

17. The Parties each have one hospital in the Reading area: Circle in Reading and BMI Hampshire Clinic in Basingstoke. While the Parties are the largest hospitals in the area, they are not in the same town and the evidence consistently showed that the Parties are not close competitors, including when assessed by type of care, source of funding, and by specialty. In particular, a number of PHMS providers are nearer to each of the Parties' hospitals than the Parties are to each other. Moreover, the Parties draw a limited number of patients from the same postcode areas and they have many more consultants

in common with other competitors than with each other. Third party views and the Parties' internal documents similarly showed that the Parties are not close competitors to each other and will continue to be constrained post-Merger by other providers.

18. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in relation to the supply of PHMS in the Reading area, including in each segment.

Private Hospital Medical Services in Bath

19. The Parties each have one hospital and are the two largest PHMS providers in Bath. The evidence showed that the Parties compete strongly with each other and that they face a more limited constraint from other providers. This was consistent across all types of care, sources of funding and specialties. In particular, the Parties draw a significant number of patients from the same postcode areas and have many more consultants in common with each other than with other private hospital providers. While there are other sizeable providers outside of Bath (eg in Bristol and to the southwest of Bath), the evidence, including third party views and internal documents, showed that these providers are not strong competitors to the Parties. A significant number of third parties expressed concerns about the Merger in Bath.
20. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of PHMS in Bath, including in each segment.

Private Hospital Medical Services in Birmingham

21. BMI currently operates two hospitals in Birmingham: BMI Edgbaston and BMI Priory. Circle was planning to open a hospital and rehabilitation centre in Birmingham in June 2020. Although construction is complete, the opening is likely to be delayed because all private hospital capacity has been temporarily allocated to the NHS to help deal with the Coronavirus (COVID-19) outbreak – see paragraph 9.
22. Based on the evidence (including in particular internal documents and third party views on BMI's competitors in Birmingham and the impact of Circle's entry), the CMA found that BMI currently faces limited competition in Birmingham and that when Circle opens its hospital, Circle and BMI will compete closely with each other. In particular, Circle's internal documents show that Circle was focused on targeting BMI's revenues. Similarly, BMI's internal documents show that BMI recognised the significant threat posed by Circle. This competitive constraint would be lost as a result of the Merger. The

evidence is consistent across all types of care, sources of funding and overlapping specialties. The CMA therefore believes that the Merger gives rise to a realistic prospect of a SLC as a result of horizontal unilateral effects in the supply of PHMS in Birmingham, including in each segment.

23. As noted above, HCA is also planning to open a hospital in Birmingham in ~~2022~~ 2022, which is being built on the campus of the NHS Queen Elizabeth Hospital, as a private patient unit (**PPU**). The CMA therefore assessed whether HCA's entry in Birmingham would be sufficiently likely, timely and sufficient to prevent a realistic prospect of an SLC.
24. The CMA found that HCA's entry was likely. However, the hospital is at an early build phase and construction may be delayed as a result of the Coronavirus (COVID-19) outbreak. HCA's entry is therefore several years away and the CMA was unable to conclude that it would be timely enough to prevent the realistic prospect of an SLC. In terms of sufficiency, the evidence shows that HCA is currently planning to open a relatively large hospital with a wide range of healthcare services near the Parties' hospitals. However, HCA's hospital is expected to be considerably smaller than the merged entity and, while there are expected to be overlaps in the planned specialties between HCA and the Parties, HCA's offering will have different areas of focus. The CMA also notes that HCA's plans for the hospital may change in the period prior to opening. In any case, HCA's entry would only increase competition in Birmingham from a modest starting point. Currently, only Spire and Ramsay pose a significant and moderate constraint respectively on the Parties and the Merger is expected to weaken competition that would have developed in the absence of the Merger.
25. In this context, and in light of the evidence discussed above, the CMA does not consider that HCA's entry would be either timely or sufficient to prevent a realistic prospect of an SLC arising from the Merger in Birmingham.

Supply of PHMS nationally

26. PMI prices are agreed between insurers and private hospital operators and common prices are applied across all hospitals in an operator's estate. The CMA has assessed whether Circle would have an incentive to raise its national PMI price post-Merger.
27. The CMA's view is that the Parties' national negotiating position with respect to PMI pricing will not be materially affected by the Merger. The merged entity's portfolio would include 55 hospitals and clinics. However, the Parties' negotiating position would only be strengthened post-Merger with respect to the two areas of overlap where the CMA found a realistic prospect of an SLC

(ie Bath and Birmingham), which form only a small proportion of the merged entity's national portfolio. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of PHMS nationally.

Vertical effects

28. The CMA found that Circle and TPG would not have the ability to foreclose providers competing with the merged entity in the downstream supply of PHMS by referring NHS patients using their primary care community services to the merged entity's hospitals rather than alternative PHMS providers.

Decision

29. For the reasons given above, the CMA believes that it is or may be the case that (i) a relevant merger situation has been created; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
30. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). Circle has until Friday 17 April 2020 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.