

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

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

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

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 11 of March 2020

We refer to your letter dated 30 January 2020 and subsequent email correspondence, requesting that the CMA consent to derogations to the Initial Enforcement Order of 20 December 2019, as re-issued on 11 March 2020 (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, Penta Capital LLP ("**Penta**") and Circle Health Holdings Limited ("**Circle**") are required to hold separate the business of Penta (the "**Penta 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. Oversight of new customer tender – paragraph 4(c), 5(a) and 5(l) of the Initial Order

The CMA has previously granted a derogation permitting BMI to notify Circle in advance of entering into any new customer contracts with a value of over £[X] (derogation 8(b)(iii) of the 24 December 2019 derogation letter, as amended by the Variation Order of 10 January 2020). The CMA understands that BMI is in negotiations

with [X] in relation to a new customer contract of a potentially significant value and duration which would fall within this derogation (“**the Proposed BMI Contract**”).

Given the significance of the Proposed BMI Contract and [X], Circle requires some oversight over the Proposed BMI Contract, in order to ensure that BMI's maintenance as a going concern is not at risk.

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. The CMA therefore consents to BMI providing [X] (Circle's Director of Hospital) and [X] (Circle's Finance Director) (the “**Authorised Recipients**”) with a high-level written overview, which may be subject to updates at the instigation of BMI, (“**the Overview**”) of the key commercial terms of its proposed bid for the Proposed BMI Contract, which is strictly limited to (i) duration and termination rights, (ii) indemnities and/or warranties (including the limits/caps on any indemnities and/or warranties [X] and (iii) the total average contract margin.

This derogation is granted pursuant to the following conditions:

- (a) the Overview shall not include any site-specific information;
- (b) Circle will submit any tender to [X] concerning the same subject matter as the Proposed BMI Contract prior to BMI providing the Overview;
- (c) Following receipt of the Overview, the Authorised Recipients shall have no involvement with any Circle tender concerning the same subject matter as the proposed BMI Contract;
- (d) [X] is informed in advance of, and consents to, the communication of the Overview to the Authorised Recipients;
- (e) a copy of the Overview is provided to the CMA in advance of it being sent to the Authorised Recipients, with the CMA to either approve or propose amendments to the Overview within a reasonable period of time;
- (f) Circle will not exercise any right of veto of the proposed bid terms set out in the Overview unless it considers there to be a real risk that the terms disclosed in the Overview would put BMI's status as a going concern at risk, and Circle would notify the CMA and seek permission in advance of exercising such a veto;
- (g) The Authorised Recipients will sign suitable confidentiality undertakings in a form to be agreed with the CMA prior to BMI providing the Overview;
- (h) no changes to the Authorised Recipients are permitted without the prior written consent of the CMA (including via email);

- (i) the information contained in the Overview shall be used for the sole purpose of assessing the potential risks to Circle arising from the Proposed BMI Contract; and
- (j) Circle will ensure that appropriate protections are put in place to prevent any person at Circle who is not an Authorised Recipients from accessing this information in the Overview, including that the Overview is password protected, and the password is made known only to the Authorised Recipients.

Clementine Messent

Assistant Director

4 March 2020, re-issued on 11 March 2020 and 23 March 2020