

**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**

**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 3 March 2020, 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. Management of the coronavirus – paragraphs 4(c), 5(a), 5(d), 5(g) and 5(l) of the Initial Order

The Parties submit that the coronavirus is now spreading throughout the UK and is expected to become more widespread, potentially giving rise to significant public health considerations. The Parties further submit that the Government may invoke emergency powers in the coming days in response to the coronavirus outbreak and that Circle and BMI will likely need to work closely with all relevant public bodies to provide support and additional hospital capacity.

Given the importance of dealing with the threat of the coronavirus and based on the information provided the CMA is willing to grant to the extent required, a derogation from **paragraphs 4(c), 5(a), 5(d), 5(g) and 5(l)** of the IEO to allow:

- (a) senior members of the Circle management team, including its CEO, Chief Medical Officer, Head of Hospitals, General Counsel, hospital managers and clinical leads, to discuss and coordinate with senior members of the BMI management team (the “**Parties**”) and with the Department of Health, local and central executives of the NHS, CCGs, Public Health England, and the CQC (the “**Public Bodies**”) regarding clinical and operational support to be provided by the Parties to the NHS in conjunction with its response to the coronavirus outbreak in the UK;
- (b) such discussions and coordination referred to in (a) may include the exchange of information relating to the Parties’ provision of clinical services (treatment) and workforce (clinical and non-clinical) and hospital capacity (beds, equipment, imaging, sterilisation, pathology, and pharmacy services, etc) as strictly necessary for the Parties to assess the scale, viability, and effectiveness of such support;
- (c) the Parties to coordinate on and effect changes to their business operations in order to fulfil the clinical and operational support required to be provided to the NHS by the Parties; and
- (d) Circle’s management team to advise its Board on the substance of any such coordinated proposals and their expected clinical, operational, and financial impacts.

This derogation is granted subject strictly to the following conditions:

- (a) the information shared would be limited to that which is strictly necessary for the purposes of supporting Public Bodies in conjunction with their responses to the coronavirus outbreak in the UK (in terms of persons involved and types of information exchanged);
- (b) to the extent possible, the Parties will keep a record of all the people involved in such discussions and the types of information that is being shared; and
- (c) the Parties will take all reasonable steps to ensure information is not shared more widely than is required, including requiring individuals at Circle or BMI who may receive confidential information regarding the other Party to enter into appropriate non-disclosure agreements as soon as practicable.

Clementine Messent

Assistant Director

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