

**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 March 2020

We refer to your letter dated 12 March 2020, requesting that the CMA consent to derogations to the Initial Enforcement Order of 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. Financial impact of the coronavirus – paragraph 5(l) and 5(b) of the Initial Order

The Parties submit that the situation in relation to the coronavirus is developing rapidly and that Government measures will be implemented at short notice and are likely to have a significant impact on the health system including independent sector providers. These measures may also have an immediate and material impact on the financial condition and financing arrangements of the BMI and Circle businesses.

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.

Given the extraordinary circumstances existing at this time, recognising the likely impact of Government measures on the Parties' businesses, and based on the information provided, the CMA is willing to grant a derogation from paragraphs 5(b) and (l) of the Initial Order to allow:

- (a) certain members of the Circle management team, including its CEO, Chief Medical Officer, Director of Hospitals, General Counsel and Finance Director to have discussions and exchange information with certain members of the BMI management team, including its CEO, Chief Financial Officer, Group Medical Director and Group Finance Director (the "**Permitted Persons**") in relation to the financial and operational impact on the BMI and Circle businesses of the coronavirus and the support they are providing to public bodies in connection with it. These discussions and exchanges of information will only include matters relating to liquidity, cash flow, operating expenditure and capital expenditure, including compliance under the Group's financing arrangements;
- (b) as deemed appropriate by Circle management, reports and updates to be provided to the Circle Board, shareholders and financiers in relation to the information described in (a) above ("**Reports**"); and
- (c) Circle to consider with BMI senior management (as described in (a) above), in consultation with shareholders and lenders, [X].

This derogation is granted subject strictly to the following conditions:

- (a) the information shared would be limited to that strictly necessary for the purposes of understanding the financial impact of the outbreak of the coronavirus and Government measures taken in response to the outbreak, together with the financial impact of the support that is requested or required to be provided to public bodies;
- (b) the Permitted Persons exchanging information under this derogation will sign an appropriate NDA and acknowledgement of the terms of this derogation as soon as practicable;
- (c) this derogation only relates to information sharing and does not allow any integration of the Circle and BMI businesses or any changes to the operation or functioning of the BMI business;
- (d) should Circle consider that further action is necessary in order to protect the ongoing viability of BMI it shall seek appropriate derogations from the CMA; and

- (e) to the extent possible, the Parties will keep records of all discussions taking place under this derogation, including dates and times, attendees, agendas and the types of information shared (“**Relevant Records**”); and
- (f) the Parties will make available to the CMA on request all Reports and Relevant Records.

Clementine Messent

Assistant Director

18 March 2020