

**DEROGATION LETTER
IN RESPECT OF INITIAL ENFORCEMENT ORDERS 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 11 May 2020 requesting that the CMA consents 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**".

The CMA understands that BMI has received an approach from the local NHS Trust (the **Trust**) to acquire the [X] (the **Hospital**). The Parties have requested a derogation to enable BMI to disclose the approach to Circle and to negotiate, agree and effect the transfer of the Hospital to the Trust.

During the Covid-19 response, BMI has been working with the Trust pursuant to the terms of the agreement between NHS England and the private operators (the **NHSE Agreement**). [X]

In light of its activities in responding to the Covid-19 pandemic, on 6 May 2020, the Trust made an offer to BMI for the Hospital, [X].

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:

1. Paragraphs 4, 5(a), 5(e), 5(i), 5(k) and 5(l) of the Initial Order

BMI submitted that the [REDACTED].

The CMA understands that there are no complex operational links between the [REDACTED] and wider BMI business and no overlap between Circle and BMI in this region.

Based on the information provided to the CMA, at this stage of the inquiry, the CMA considers that the requested derogation would not prejudice a reference or impede the taking of any action which may be justified by the CMA's decisions on the reference. On this basis, CMA consents to:

- (a) BMI disclosing the Trust's approach to designated individuals at Circle and obtaining confirmation from Circle's CEO that Circle does not object to the transfer or to the terms of the transfer;
- (b) BMI engaging with the Trust with a view to (i) concluding an agreement in principle and (ii) concluding a final agreement in relation to the transfer of the hospital;
- (c) if agreement is reached, BMI effecting the transfer of the Hospital, [REDACTED]; and
- (d) Circle providing a high-level update to its Board in relation to the transfer.

This derogation is granted pursuant to the following conditions:

- (a) confidential information will be shared only with [REDACTED] (Circle's CEO), [REDACTED] (Circle's General Counsel), and [REDACTED] (Circle's Finance Director) pursuant to the terms of non-disclosure agreements in the form agreed with the CMA;
- (b) only information which is necessary to enable Circle to assess the proposed transfer and confirm that it does not object shall be shared, including a description of the key proposed terms and conditions of the transfer;
- (c) BMI shall provide the CMA with an advance schedule of the types of information it proposes to provide to Circle for approval; and

(d) any documents shared with Circle will be password-protected.

Based on the information provided to the CMA, the CMA considers that the requested derogation would not prejudice a reference or impede the taking of any action which may be justified by the CMA's decisions on the reference.

On this basis, the CMA consents to the transfer of the Hospital to the Trust.

Clementine Messent

Assistant Director

14 May 2020