

## **COMPLETED ACQUISITION BY CIRCLE HEALTH HOLDINGS LIMITED OF GHG HEALTHCARE HOLDINGS LIMITED**

### **Directions issued on 25 June 2020 pursuant to paragraph 13.1 of the Undertakings in Lieu accepted by the Competition and Markets Authority on 23 June 2020**

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.

On 8 April 2020, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).

On 24 April 2020 pursuant to section 73A(2)(b) of the Act, the CMA concluded that it considered that there were reasonable grounds for believing that the undertakings in Lieu (**UIL**) of a reference offered by Circle, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. On 23 June 2020 the CMA accepted Undertakings from Circle.

The CMA now issues written directions under paragraph 13.1 of the UIL, for the purpose of securing compliance with the Undertaking, the Parties must appoint a monitoring trustee (**MT**) in accordance with the terms provided for in this Annex and must comply with the obligations set out in the Annex.

Signed,

**Clementine Messent**  
Assistant Director, Mergers  
Competition and Markets Authority  
25 June 2020

## Annex

### Directions to appoint a monitoring trustee

#### Interpretation

In these directions:

**'the Act'** means the Enterprise Act 2002;

**'Affiliate'** a person is an affiliate of another person if they or their respective enterprises would be regarded as being under common control for the purposes of section 26 of the Act;

**'Bath Divestment Business'** means the entire issued share capital of Circle Hospital (Bath) Limited (company number 06296104) with registered office at 32 Welbeck Street, London, W1G which operates Circle Bath Hospital located at Foxcote Ave, Peasedown St John, Bath BA2 8SQ, as more fully described in Annex 1 of the UILs;

**'Birmingham Divestment Business'** means the entire issued share capital of Circle Birmingham Limited (company number 07714029) with registered office at 32 Welbeck Street, London, W1G 8EU which operates the Circle Birmingham Hospital, as more fully described in Annex 2 of the UILs;

**'business'** has the meaning, unless otherwise stated, given by section 129(1) and (3) of the Act;

**'Circle'** means Circle Health Holdings Limited (company number 10543098) with registered office at 32 Welbeck Street, London, W1G 8EU;

**'Circle Bath Hospital'** means the hospital located at Foxcote Ave, Peasedown St John, Bath BA2 8SQ;

**'Circle Birmingham Hospital'** means the hospital located at 5 Pebble Mill Road, Birmingham, B5 7SA;

**'Circle Business'** means the business of Circle and its subsidiaries carried on as at the commencement date but excluding the Divestment business;

**'CMA'** means the Competition and Markets Authority;

**'Commencement Date'** means 23 June 2020;

**'Confidential Information'** means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

**'Control'** shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest

in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

**‘Divestment Business’** means the Bath Divestment Business and the Birmingham Divestment Business;

**‘enterprise’** has the meaning given in section 129(1) of the Act;

**‘Interest’** includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings but does not include a contract to acquire shares in the future; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

**‘MT’** means the monitoring trustee appointed in accordance with this Annex;

**‘subsidiary’** has the meaning, unless otherwise stated, given by section 1159 of the Companies Act 2006 (and ‘subsidiaries’ shall be construed accordingly);

**‘the Transaction’** means the acquisition by Circle of GHG on 8 January 2020 by way of sale and purchase agreement;

**‘UILs’** means the Undertakings in Lieu accepted by the CMA on 23 June 2020;

Terms and expressions defined in the Undertakings in Lieu have the same meaning in these directions, unless the context requires otherwise.

## **Appointment**

1. Circle must appoint a MT in order to ensure compliance with the UILs, in particular to:
  - a. monitor and report to the CMA on compliance by Circle with the UILs; and
  - b. support the CMA taking any action to ensure compliance with the UILs.
2. The MT must act on behalf of the CMA and be under an obligation and duty of care to the CMA to carry out his or her functions to the best of his or her abilities.
3. Circle and the Divestment Business must cooperate fully with the MT, in particular as set out below, and must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of Circle and the Divestment Business as set out in these directions.

## General

4. The MT must possess appropriate qualifications and experience to carry out his or her functions.
5. The MT must neither have, nor become exposed to, a conflict of interest that impairs his or her objectivity and independence in discharging his or her duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
6. Circle shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out his or her functions.
7. Circle must appoint the MT as soon as is reasonably practicable and in any event by **5pm on 30 June 2020** and the MT will continue to act either until the CMA decides the MT is no longer required or the completion of the divestment of the Divestment Business.
8. The appointment of a MT by Circle is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and:
  - a. the name and contact details of the proposed MT and a second proposed MT in reserve (should the CMA not approve the first proposed MT) must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm on 25 June 2020**;
  - b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by **5pm on 26 June 2020**; and
  - c. once the MT has been approved by the CMA and appointed, Circle must provide the CMA with a copy of the agreed terms and conditions of appointment.

## Functions

9. The functions of the MT will be to:
  - a. ascertain and report to the CMA in relation to the current level of compliance by Circle and its subsidiaries with the UILs;
  - b. assess and report to the CMA in relation to the arrangements made by Circle for compliance with the UIL and what changes to those arrangements, if any, are necessary to protect the Divestment Business, if required;

- c. identify and supervise if necessary the arrangements made by Circle for ensuring compliance with the UILs; and
  - d. without prejudice to the right of Circle and the Divestment Business to directly contact the CMA, respond to any questions which Circle and the Divestment Business may have in relation to compliance with the UIL, in consultation with the CMA.
10. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the Circle Business and the Divestment Business, such as written and electronic communications, telephone conversations and meetings as may be required.
11. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance with the UILs.

### **Obligations of Circle and the Divestment Business**

12. The Circle Business, the Divestment Business and their respective affiliates and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his or her functions, including but not limited to:
- a. the provision of full and complete access to all personnel, books, records, documents, facilities and information of the Circle Business and the Divestment Business as the MT may reasonably require; and
  - b. the provision of such office and supporting facilities as the MT may reasonably require.
13. If the Circle Business or the Divestment Business is in any doubt as to whether any action or communication would infringe the UILs, they are required to contact the MT for clarification.
14. If the Circle Business or the Divestment Business has any reason to suspect that the UILs may have been breached, it must notify the MT and the CMA immediately.

### **Reporting functions**

15. The MT is required to provide an initial report to the CMA no later than **3 weeks following appointment**, giving details of any arrangements which have been, or should be, put in place to ensure compliance with the UIL, and including among other things:
- a. details of the current extent of compliance with the UILs;

- b. a description of the current arrangements made for the operation of the Divestment Business and for the preservation of the assets (including its organisational capital and its relationships with medical professionals and patients); and
- c. recommendations as to what changes to those arrangements, if any, are necessary.

16. In addition to providing the initial report referred to in paragraph 15 above, the MT must provide a statement to the CMA every two weeks thereafter (or otherwise as required by the CMA) stating whether or not, in his or her view, the Circle Business and the Divestment Business have and are complying with the UILs. At the same time, the MT must provide the CMA with a report setting out the following:

- a. the basis for the MT's view that the UILs has or has not, as the case may be, been complied with and in particular whether:
  - i. anything has caused him or her to be concerned as to whether the Circle Business and the Divestment Business have complied with the UILs, and if it has, whether those concerns have been resolved and why;
  - ii. he or she has any remaining doubts or uncertainties as to whether the Circle Business and the Divestment Business have complied with the UILs; and
  - iii. anything that causes him or her to be concerned about a possible future breach of the UILs (whether deliberate or inadvertent);
- b. details of the performance of the Divestment Business, including any factors that might indicate asset deterioration;
- c. whether appropriate steps are being taken to maintain the Divestment Business as a going concern;
- d. the extent to which the Circle Business and the Divestment Business have cooperated with the MT in his or her task of monitoring its compliance with the UILs and details of any aspects of the cooperation of the Circle Business and the Divestment Business that he or she considers could be improved;
- e. the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance of the Circle Business and the Divestment Business with the UILs and if there is anything that the MT considers would assist him or her in monitoring compliance; and
- f. the information he or she used to compile the report.

17. When providing reports to the CMA, the MT must ensure that he or she does not disclose any information or documents to the CMA which the Circle Business and the Divestment Business would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires Circle and its subsidiaries to produce any information or documents to the MT which are privileged.
18. The MT must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the UILs have been breached, or if he or she considers that he or she is no longer in a position to effectively carry out his or her functions. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 17 above).
19. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 15 and 16) are confidential and should not be disclosed to Circle or its subsidiaries, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.