

**DEROGATION LETTER
IN RESPECT OF UNDERTAKINGS IN LIEU OF A REFERENCE
PURSUANT TO SECTION 73(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 to certain actions for the purposes of the Undertakings in Lieu of a Reference accepted by the Competition and Markets Authority (CMA) pursuant to section 73(2) of the Enterprise Act 2020 on 23 June 2020.

Following its investigation into the completed acquisition by Circle Health Holdings Limited (**Circle**) of GHG Healthcare Holdings Limited (a parent company of BMI Healthcare Limited) (together, the **Parties**) (the **Merger**), the CMA decided that the Merger had resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom and that it would be referred for a phase 2 investigation unless the Parties offered acceptable undertakings to address these competition concerns.

On 23 June 2020, the CMA accepted Undertakings in Lieu (**UILs**) of a reference from the Parties under section 73(2) of the Enterprise Act 2002 (the **Act**). The terms defined in the UILs have the same meaning in this letter Under paragraph 11 of the UILs, Circle remains under an obligation to minimise as far as possible any risk of loss of competitive potential of the hospital located at Foxcote Ave, Peasedown St John, Bath BA2 8SQ and operated by Circle Hospital (Bath) Limited (**CHBL**) (the **Circle Bath Hospital**) and the hospital located at 5 Pebble Mill Road, Birmingham, B5 7SA and operated by Circle Birmingham Limited (together the **Divestment Business**).

On 25 June 2020, the CMA issued directions to appoint a monitoring trustee pursuant to paragraph 11 of the UILs accepted on 23 June 2020 (the Monitoring Trustee).

We refer to your letter dated 24 September 2020 requesting that the CMA consents to derogations to the UILs.

After due consideration, based on the information available and in the particular circumstances of this case, the CMA consents to a derogation to the UILs. Circle may carry out the following actions, in respect of the specific paragraphs:

1. Paragraph 11.1(d) of the UILs

The CMA understands that in anticipation of the divestment of CBL and CHBL, Circle wishes to take certain actions in order to regularise the ownership and financing of certain assets, in particular:

- (a) assets currently recorded by CBL, but which were intended from the outset to be used by Circle Rehabilitation Services Limited (**CRSL**), which Circle proposes to transfer from CBL to CRSL with a corresponding payment made to CBL;
- (b) assets intended for the Circle Birmingham acute facility which are currently owned by other Circle entities, which Circle proposes to transfer to CBL and for such assets to come within the scope of CBL's finance lease with [X]. In addition, Circle proposes to transfer certain assets which are already owned by CBL (but which were paid for in cash) onto CBL's finance lease with [X]; and
- (c) a sale and lease back with [X] for certain equipment currently owned by CHBL.

Circle has requested a derogation to permit the transfer of ownership of the assets impacted by the above including entering into the proposed financing arrangements. The CMA understands that this will ensure that the assets to be transferred with CBL to a purchaser are owned by CBL and covered by its Finance Lease, and that assets which are used by other Circle entities will be removed from the CBL Finance Lease. Cash transferred to CBL in consideration for the transfer of legal ownership of assets to other Circle entities, or as reimbursement for interest payments already made by CBL, will be retained by CBL.

The CMA understands that the terms of the new CHBL Finance Lease [X] and have been approved by CHBL.

On this basis, the CMA consents to the following:

- (a) the transfer of ownership of certain assets from CBL to CRSL, with CBL being reimbursed for the value of the assets;
- (b) the transfer of ownership of certain assets from Circle to CBL, with a corresponding payment made by CBL to Circle;

- (c) CBL including the assets referred to in paragraph (b) and certain additional assets currently owned by CBL (including [redacted]) within its current finance lease with [redacted] through a sale and lease back arrangement; and
- (d) CHBL entering into a new sale and lease back agreement with [redacted] for certain equipment.

Alexandra Zachmann
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15 October 2020