

CASE ME/6864/19 - CIRCLE/BMI

ACQUISITION BY CIRCLE HEALTH HOLDINGS LIMITED OF

GHG HEALTHCARE HOLDINGS LIMITED

REQUEST BY CIRCLE FOR THE VARIATION OF THE UILS RELATING TO THE DIVESTMENT OF CIRCLE BIRMINGHAM LIMITED

1. SUMMARY

1.1 Circle Health Holdings Limited ("**Circle**") completed the acquisition of BMI Healthcare Limited on 8 January 2020. Following the CMA's review, Circle offered and the CMA accepted undertakings in lieu of a reference on 23 June 2020, pursuant to which Circle agreed to divest Circle Hospital (Bath) Limited and Circle Birmingham Limited ("**CBH**") (to a purchaser or purchasers approved by the CMA (the "**UIILs**").

1.2 Having undertaken a thorough sales process in relation to CBH, conducted by Circle's financial advisers and supervised by the Monitoring Trustee, it is now clear that a divestment of CBH will not be achieved. Accordingly, Circle now submits a request to vary the UIILs.

2. MATERIAL CHANGE IN CIRCUMSTANCES

CBH is likely to constitute a less effective competitive constraint than assessed by the CMA in its merger investigation

2.1 As explained to the Case Team, Circle has used its best endeavours throughout the divestment process to secure the divestment of CBH.

2.2 Circle instructed its financial advisers to conduct a marketing process for CBH which resulted in a number of parties submitting non-binding offers. For reasons explained to the Case Team, it has not been possible to reach an agreement for the sale of CBH.

2.3 Despite the fact that CBH is a new, state of the art facility, there is compelling evidence, following the extensive market test that has been conducted via the sale process, that a divestment of CBH is unlikely to be achieved and that CBH is likely to constitute a less effective competitive constraint than the information available at the time of its decision of 8 April 2020 (the "**SLC Decision**") suggested.

The impact of the Covid-19 pandemic

2.4 The Covid-19 pandemic has had a very significant operational impact on both the NHS and the private hospital sector in the UK. As a report from The Health Foundation shows¹, the pressure of treating large numbers of Covid-19 patients has led to much longer delays for the growing number of patients on waiting lists.

2.5 Data on clinical pathways show that four million fewer people completed elective treatment in 2020 compared with 2019. As well as fewer patients being treated, 2020 saw six million fewer people referred into consultant-led elective care than in 2019.

2.6 The waiting list has now reached the highest level since comparable records began, with many more patients experiencing long delays in diagnosis and treatment. The waiting list could still grow substantially depending on how and when the anticipated large number of 'missing patients' (i.e., those who did not seek medical assistance in relation to potentially serious conditions during the pandemic) are belatedly added to the waiting list.

¹ Report of The Health Foundation, "Longer waits, missing patients and catching up .How is elective care in England coping with the continuing impact of COVID-19?". April 2021

- 2.7 As regards Birmingham, the number of patients waiting for treatment has increased by 67% compared to the pre-Covid position. Pre-Covid there were no patients waiting more than a year for surgery, whereas that number is now almost 18,000. Pre-Covid, 88% of Orthopaedic patients were treated within the target wait time; however this is currently as low as 53%.²
- 2.8 The Covid-19 pandemic, and the need to support the NHS' response, has therefore affected the competitive dynamics (including as regards the types of services demanded from private hospitals) in the market for private hospital medical services, as compared to that assessed by the CMA in its SLC Decision.

The entry of HCA is now timely and sufficient

- 2.9 In its SLC Decision, the CMA concluded that HCA's entry in Birmingham would be neither timely or sufficient to prevent an SLC.
- 2.10 Circle understands that HCA's new hospital development is on track to open in mid-2022. Construction of the facility is now largely complete and Circle understands that HCA is moving ahead at pace with its plans to commission and open the facility. In particular, Circle understands that HCA is actively recruiting to fulfil a range of positions in the hospital.
- 2.11 HCA's opening will bring four operating theatres, six ICU beds, 50 inpatient beds and 16 day-case beds, in addition to a further 72 beds available for NHS patients. It is significant that 50 HCA inpatient beds will be available only for private patients.
- 2.12 Taking into account the commissioning time likely to be required for CBH, there will now be only a minimal period of time during which CBH would be in operation without direct competition from the closely located HCA facility
- 2.13 Circle submits that HCA's entry will therefore be both timely and sufficient, and as such will provide a sufficient competitive constraint to prevent any SLC arising in Birmingham.

² Data from NHS Digital, Birmingham and Solihull CCG, RTT March 2021 vs March 2019