

Notice of provisional decision on the review of the undertakings given by Circle Healthcare Holdings Limited pursuant to section 73 of the Enterprise Act 2002

1. On 8 January 2020, Circle Health Holdings Limited (**Circle**) acquired all the issued share capital of GHG Healthcare Holdings Limited, the indirect parent company of BMI Healthcare Limited (collectively **BMI**).
2. On 8 April 2020, the CMA decided under section 22(1) of 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**) as a result of horizontal unilateral effects in relation to the supply of Private Hospital Medical Services (**PHMS**) in Bath and Birmingham (the **SLC Decision**¹).
3. On 23 June 2020, the CMA accepted undertakings in lieu of a reference under section 73(2) of the Act (**UILs**²), pursuant to which Circle agreed to divest Circle Hospital (Bath) Limited (**Circle Bath**) and Circle Birmingham Limited (**Circle Birmingham Hospital or the acute facility**) (the **Divestiture Businesses**) to a purchaser or purchasers approved by the CMA by the end of the Divestiture Period (as defined in the UILs) (**UIL Acceptance Decision**).
4. On 1 June 2021, Circle completed the divestiture of Circle Bath to Royal United Hospitals Bath NHS Foundation Trust.⁵
5. Despite running a formal divestiture process Circle received no formal offers for Circle Birmingham Hospital. The key issue raised by bidders was [X]. On 21 June 2021, Circle requested the CMA varies the UILs insofar as they relate to the divestiture of Circle Birmingham Hospital (**UILs Variation Request**).
6. On 10 December 2021, the CMA published its Provisional Decision on the review of the undertakings given by Circle Health Holdings Limited.
7. In summary, the CMA assessed whether there has been any change in circumstances related to the market conditions and in relation to the UILs such that the current UILs are no longer appropriate.

¹ Please access the [SLC Decision](#) in the Circle/BMI case page.

² Please access the [UIL Acceptance Decision](#) in the Circle/BMI case page.

8. Whilst the CMA has provisionally found that the market conditions have not changed in a way that would justify releasing Circle from the UILs, it provisionally found that there has been a change of circumstances as to whether the UILs are an effective remedy to the SLC.
9. Thus, the CMA has provisionally found that the divestiture of Circle Birmingham Hospital as currently envisaged in the UILs is no longer an effective remedy to the SLC and therefore the UILs are no longer appropriate and should be varied. The CMA has provisionally concluded that either of the following remedies would be an effective remedy to the SLC :
 - (a) a divestiture of Circle Birmingham Hospital, with ~~£~~ [on more flexible terms]; or
 - (b) a divestiture of BMI Priory.
10. Such an amended remedy would be implemented by Circle submitting a variation request to the CMA. If Circle does not agree to either of the above proposed courses of action, in light of the fact that the UILs are not being fulfilled, Section 75 of the Act gives the CMA the power to issue an order for the purposes of remedying the SLC. Such an Order could include a requirement for Circle to ~~£~~ [on more flexible terms] to a purchaser of Circle Birmingham Hospital or include the divestiture of BMI Priory.
11. Any representation in relation to the CMA's provisional decision should be made by 24 December 2021 and sent to: Marta Freire (marta.freire@cma.gov.uk).