

Completed acquisition by Riviera Bidco Limited of Dental Partners Group Limited

Decision that undertakings might be accepted

ME/6990/22

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 7 September 2022. Full text of the decision published on 22 September 2022.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

Introduction

1. On 29 April 2022, Riviera Bidco Limited (**Riviera**), which owns and controls Rodericks Dental Limited (**Rodericks**), acquired Dental Partners Group Limited (**Dental Partners**) (the **Merger**).
2. On 23 August 2022, 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**).
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to Riviera of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 22(3)(b) on the date of the SLC Decision in order to allow CapVest Partners LLP (**CapVest**), the ultimate controller of Riviera, the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.
4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 31 August 2022, CapVest offered undertakings to the CMA for the purposes of section 73(2) of the Act.

5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to CapVest that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
7. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the provision of NHS general dental treatments in each of two local areas defined as the areas within 4 miles of (i) Rodericks' Amber Valley dental practice and (ii) Dental Partners' Conisbrough dental practice (the **SLC areas**).
8. To address the competition concerns set out in the SLC Decision, CapVest has offered undertakings in lieu of a reference to divest the (one) Rodericks dental practice in each of the SLC areas, or, in the alternative, the (one) Dental Partners practice in each SLC area (the **Divestment Practices**) (the **Proposed Undertakings**).
9. The Divestment Practices would be sold as going concerns on a cash-free debt-free basis.
10. While no other regulatory approvals are required in order to transfer the Divestment Practices to a third party purchaser, the CMA notes that, in relation to three of the Divestment Practices, (i) the NHS must approve the intra-group transfer of those practices' units of dental activity (**UDAs**) (these will be transferred to a new Riviera group entity established for the purposes of the divestment), and (ii) the Care Quality Commission (**CQC**) must approve the new entity in order for it to provide dental services from the current premises of the practice. Based on the Parties' submissions, the CMA understands that the process to obtain these regulatory consents is straightforward and well-established¹ and therefore should not give rise to any obstacles in implementing the remedy.
11. The divestments would occur by way of a sale of the relevant assets and will include: contracts with National Health Service England (**NHS**) to provide general dental treatments to patients, site leases, key staff and equipment.

¹ [3<] NHS approval will take between 3 to 6 months, and CQC approval will take 12 weeks.

12. CapVest has also offered to provide any transitional services, to the extent required by the purchaser, with the approval of the CMA, as part of the Proposed Undertakings.

The CMA's provisional views

13. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the Merger.²
14. The CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA, given that they would eliminate the full overlap between the Parties in the SLC areas. As such, the Proposed Undertakings would restore the competitive constraint provided by Dental Partners on Rodericks (and vice versa) that would otherwise be lost in the SLC areas following the Merger.
15. The CMA currently believes that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also believes at this stage that the Proposed Undertakings may be capable of ready implementation. This is because the Divestment Practices executed their primary functions prior to the Merger on a stand-alone basis, with operational decisions made at the practice level, and most key staff, such as dentists and dental nurses, are not shared with other parts/dental practices of the Rodericks or Dental Partners businesses. Evidence provided by CapVest to the CMA shows that several prospective purchasers have expressed an interest in acquiring the Divestment Practices. On this basis, the CMA does not consider that it is necessary for the CMA to approve the identity of the purchaser or purchasers prior to final acceptance of the undertakings.³
16. Under the Proposed Undertakings, all fixed assets, leases, and NHS contracts will be divested, and CapVest and Dental Partners will use their best efforts to ensure all key staff would transfer with the Divestment Practices to the prospective purchaser(s). Furthermore, CapVest has confirmed that prospective purchaser(s) will be able to procure the supply of key products and services which are needed to ensure the continued operation of the Divestment Practices in a short period of time and with ease.⁴
17. Should the CMA deem any Divestment Practices to be unsuitable or insufficient, for instance, following discussions with potential purchasers, the Parties offer to divest

² [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

³ [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (paragraphs 5.28 to 5.32).

⁴ Remedies Form for Offers of Undertakings in Lieu of Reference dated 24 August 2022, paragraph 7.3.

the alternative site in each SLC area further ensures that the Proposed Undertakings are clear-cut and effective in terms of addressing the SLC identified.

18. For these reasons, the CMA currently thinks that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.
19. The CMA's decision on whether ultimately to accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA.

Consultation process

20. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.⁵

Decision

21. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by CapVest, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 2 November 2022 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 30 December 2022 if it considers that there are special reasons for doing so.ⁱ If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 22 (1) and 34ZA(2) of the Act.

Sorcha O'Carroll
Senior Director Mergers
Competition and Markets Authority
7 September 2022

ⁱ As a result of the Bank Holiday for the State Funeral of Queen Elizabeth II on the 19th September 2022, which was announced after the issue of the CMA's decision that undertakings might be acceptable, the CMA now has until 3 November 2022 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 3 January 2023 if it considers that there are special reasons for doing so.

⁵ [CMA2](#), paragraph 8.29.