

Anticipated acquisition by Portman Healthcare (Group) Limited of Dentex Healthcare Group Limited

Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on proposed undertakings in lieu of reference pursuant to section 73 of the Act

ME/7017/22

Introduction

1. Portman Healthcare (Group) Limited (**Portman**) has agreed to acquire Dentex Healthcare Group Limited (**Dentex**) (the **Merger**). Portman and Dentex are together referred to as the **Parties**.
2. On 3 February 2023, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**). The text of the SLC Decision is available on the CMA webpages.¹
3. On 10 February 2023, the Parties offered to the CMA undertakings in lieu of a reference to a phase 2 investigation for the purposes of section 73(2) of the Act (the **Proposed Undertakings**).
4. On 17 February 2023, the CMA gave notice to the Parties, pursuant to section 73A(2)(b) of the Act, that it considers that there are reasonable grounds for

¹ See [Portman Healthcare / Dentex Healthcare merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/portman-healthcare-dentex-healthcare-merger-inquiry).

believing that the Proposed Undertakings, 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 Parties' offer (the **UIL Provisional Acceptance Decision**). The text of the UIL Provisional Acceptance Decision is also available on the CMA webpages.²

The undertakings offered

5. As set out in the SLC Decision, the CMA found that the Merger gives rise to a realistic prospect of a SLC in the following local areas (each an **SLC area**) in relation to the provision of:
 - (a) NHS orthodontic treatments in two local areas, being the areas within six miles of Portman's Truro Smile Clinic and Dentex's River Truro practice, in Truro (Cornwall); and
 - (b) private dental treatments in seven local areas, being the areas within eight miles of:
 - (i) Portman's Abbey Mead and Dentex's Harwood dental practices in Tavistock (Devon);
 - (ii) Portman's Moor Dental and Dentex's Devon Dental Centre of Excellence dental practices, in Ashburton (Devon); and
 - (iii) Dentex's Trimdon, Spennymoor and Bowburn dental practices, in the Durham/Spennymoor area.
6. The CMA also found that the Merger gives rise to a realistic prospect of a SLC in relation to competition for NHS contracts to supply orthodontic treatments within the geographic boundary of the NHS Integrated Care Board (**ICB**) for Cornwall & Isles of Scilly.
7. As set out in the UIL Provisional Acceptance Decision, to address the SLCs identified by the CMA the Parties have offered the Proposed Undertakings. Specifically, the Parties offered a structural divestment, namely to divest the dental practices listed in Annex A of the UIL Provisional Acceptance Decision (the **Proposed Divestment Business**).
8. In two local areas – in Tavistock and in the Durham/Spennymoor area – the Parties made alternative offers to divest other dental practices in the event that the CMA considers that divestment of the relevant dental practices in the

² See [Portman Healthcare / Dentex Healthcare merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

Proposed Divestment Business is not an effective and clear-cut remedy (the **Tavistock Alternative** and the **Durham/Spennymoor Alternative**, respectively).

9. The text of the undertakings is available on the CMA webpages.³

CMA assessment

10. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings consisting of the Proposed Divestment Business with the Tavistock Alternative will resolve the SLCs identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of these undertakings or concerns about their implementation.⁴
11. As set out in the UIL Provisional Acceptance Decision the CMA's reasons for this are as follows:
- (a) The Proposed Divestment Business would remove the increment resulting from the Merger in NHS orthodontic treatments in Cornwall, and in private dental treatments in Devon and the Durham/Spennymoor area. The divestment of these practices would also result in the divestment of practices in Cornwall that could compete in future for NHS contracts to supply orthodontic treatments in the Cornwall & Isles of Scilly ICB.
 - (b) The Parties' preferred option in the Proposed Divestment Business in relation to Tavistock (ie the divestment of Dentex's Harwood Dental Practice) would not be capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. This is because the Harwood Dental Practice does not execute many of its primary functions on a stand-alone basis. Accordingly, that site did not form part of the CMA's Acceptance in Principle decision, which instead includes the Tavistock Alternative.
 - (c) The Proposed Divestment Business with the Tavistock Alternative consist of businesses that execute many of their primary functions on a stand-alone basis, with many 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 Portman or Dentex businesses.

³ See [Portman Healthcare / Dentex Healthcare merger inquiry - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

⁴ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

Accordingly, the CMA considers that these sites are capable of being a clear-cut and effective resolution of the CMA's competition concerns.

12. For completeness, the CMA notes in relation to Durham/Spennymoor, that since the Parties' preferred site option in the Proposed Divestment Business would be capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns, the CMA does not consider it necessary or appropriate at this stage to consider the proposed Durham/Spennymoor Alternative. This is in line with the CMA's guidance that it will select the least intrusive effective clear-cut remedy when presented with multiple versions of a remedy offer.⁵
13. As set out at paragraph 19 of the UIL Provisional Acceptance Decision, the CMA does not consider it appropriate to require an upfront buyer since the Parties have provided the CMA with evidence that the market is highly active and liquid, acquisitions of individual and small groups of practices are common, the Parties have identified some potential purchasers, the practices are structured in a manner which should facilitate a relatively straight-forward sales process and the practices are likely to be considered commercially attractive. Accordingly, the CMA also believes at this stage that the Proposed Undertakings consisting of the Proposed Divestment Business with the Tavistock Alternative may be capable of ready implementation.

Proposed decision and next steps

14. For the reasons set out above, the CMA currently considers that the Proposed Undertakings (the Proposed Divestment Business with the Tavistock Alternative) are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
15. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the proposed undertaking is available on the CMA web pages.⁶
16. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a

⁵ [Merger remedies \(publishing.service.gov.uk\)](https://publishing.service.gov.uk), CMA87, December 2018, paragraph 4.9.

⁶ See [Portman Healthcare / Dentex Healthcare merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.⁷

17. Representations should be made in writing to the CMA and be addressed to:

Sophie Halls, Principal Case Officer
sophie.halls@cma.gov.uk

Deadline for comments: 16 March 2023

⁷ Under paragraph 2(4) of Schedule 10 to the Act.