

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

Decision that undertakings might be accepted

ME/7017/22

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 17 February 2023. Full text of the decision published on 2 March 2023.

Please note that [✂] 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. 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**).
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to the Parties of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision in order to allow the Parties 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 10 February 2023, the Parties 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 the Parties 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 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.
8. The SLC Decision also found that the Merger gives rise to a realistic prospect of an 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.

9. To address this SLC, the Parties have offered to give undertakings in lieu of a reference to divest various dental practices (the **Proposed Undertakings**). The Parties have offered to divest the dental practices listed in Annex A (the **Proposed Divestment Business**). The divestment of these practices 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. In two local areas – in Tavistock and in the Durham/Spennymoor area – the Parties have made alternative offers to divest other dental practices in the event that the CMA considers that divestment of the relevant dental practices in the Proposed Divestment Business is not an effective and clear-cut remedy. These alternative dental practices are listed in Annex B (**Tavistock Alternative**) and Annex C (**Durham/Spennymoor Alternative**).
10. Each divested dental practice would include all facilities, most key staff, intellectual property, and tangible and intangible assets.
11. The Parties have proposed that the CMA accept the Proposed Undertakings without an upfront buyer condition.
12. All dental practices divested in accordance with the Proposed Undertakings would be sold on a debt-free cash-free basis.
13. The CMA notes that (i) the Care Quality Commission (**CQC**) must approve registration of purchasers of dental practices and (ii) the NHS must approve the transfer of two NHS contracts held by practices in the Proposed Divestment Business. Based on the Parties' submissions, the CMA understands that the process to obtain these regulatory consents is straightforward and well-established and therefore should not give rise to any obstacles in implementing the Proposed Undertakings.¹ Aside from these, no other regulatory approvals are required in order to transfer the Proposed Divestment Business, the Tavistock Alternative, or the Durham/Spennymoor Alternative.

The CMA's provisional views

14. 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

¹ The Parties expect CQC approval to be granted in approximately 12 weeks from the time the buyer submits an application, and NHS approval to be obtained within approximately 2-4 weeks of notification.

starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.² When considering whether to accept undertakings in lieu of a reference, the CMA has an obligation under the Act to have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any resulting adverse effects.³

15. The CMA believes that the Proposed Undertakings consisting of the Proposed Divestment Business with the Tavistock Alternative, 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 overlap between the Parties in the provision of the relevant dental services in each SLC area. As such, they may result in replacing the competitive constraint that would otherwise be lost following the Merger.
16. The CMA currently believes that the Proposed Undertakings consisting of the Proposed Divestment Business with the Tavistock Alternative may be capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. This is because 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. 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.
17. In relation to Tavistock specifically, the CMA does not consider that the Parties' preferred option included in the Proposed Divestment Business, ie the divestment of Dentex's Harwood Dental Practice, would 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. [✂]. By contrast, the CMA considers that the Tavistock Alternative, ie the divestment of Portman's Abbey Mead Dental Practice, would be capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns, for the reasons set out at paragraph 16 above.
18. In relation to Durham/Spennymoor specifically, as the CMA considers that the Parties' preferred option included in the Proposed Divestment Business, ie the

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

³ Section 73(3) of the Act and [Mergers remedies \(CMA87\), December 2018](#), paragraph 3.30.

divestment of Dentex's Burgess & Hyder Dental Group, 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 to further consider the Durham/Spennymoor Alternative (concerning Portman dental practices in the Durham/Spennymoor area).

19. The CMA considers that an upfront buyer is not required in this case. The Parties have provided the CMA with evidence that similar acquisitions of individual or small numbers of dental practices are a common occurrence in the UK, and that the market is highly active and liquid. The CMA understands that the Parties have already had some initial conversations with potential buyers, that various dental groups are actively looking to expand, and that there is a large range of potential purchasers such that there is not likely to be difficulty in finding prospective purchasers. The CMA understands that the dental practices to be divested according to the Proposed Undertakings (the Proposed Divestment Business with the Tavistock Alternative) are structured in a manner which would facilitate a relatively straightforward sales process. The CMA also notes that financial data provided to the CMA supports the commercial attractiveness of the dental practices to be divested.⁴
20. For these reasons, the CMA currently thinks that there are reasonable grounds for believing that the Proposed Undertakings (the Proposed Divestment Business with the Tavistock Alternative), or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.
21. The CMA's decision on whether ultimately to accept the Proposed Undertakings (the Proposed Divestment Business with the Tavistock Alternative) 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

22. 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

⁴ *Mergers remedies (CMA87)*, December 2018, paragraphs 5.28 to 5.32.

⁵ *CMA2*, paragraph 8.29.

Decision

23. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings (the Proposed Divestment Business with the Tavistock Alternative) offered by the Parties, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 18 April 2023 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 15 June 2023 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

Sorcha O’Carroll
Senior Director, Mergers
Competition and Markets Authority
17 February 2023

ANNEX A

PROPOSED DIVESTMENT BUSINESS

Name of SLC area	Name of Portman Site	Address of Portman Site	Name of Dentex Site	Address of Dentex Site	Site(s) to be divested
Ashburton	Moor Dental & Implant Clinic	7 West Street, Ashburton, Devon, TQ13 7DT	-	-	Moor Dental & Implant Clinic
Truro and the Cornwall & Isles of Scilly ICB	-	-	River Practice	Castle Mews, 10 Castle Street, Truro, Cornwall, TR1 3AF	River Practice
	-	-	River Practice at the Bay	12 Alverton Terrace, Penzance, Cornwall, TR18 4JH	River Practice at the Bay
Tavistock	-	-	Harwood Dental Practice	8 Watts Road, Tavistock, Devon, PL19 8LF	Harwood Dental Practice
Durham / Spennymoor area	-	-	Burgess & Hyder Dental Group (Bowburn)	Wellsprings Business Centre, Durham Road, Bowburn, Durham, DH6 5AU	“Burgess & Hyder Dental Group” comprising the Bowburn, Spennymoor, Trimdon, Ferryhill, Chilton,
	-	-	Burgess & Hyder Dental	17 Whitworth Terrace, Spennymoor,	

			Group (Spennymoor)	County Durham, DL16 7LD	Coundon, Stanhope, Sedgefield, Esh Winning, Billingham and Wynyard sites
-	-		Burgess & Hyder Dental Group (Trimdon)	16 Wynyard Road, Trimdon Village, County Durham, TS26 6JH	
-	-		Burgess & Hyder Dental Group (Ferryhill)	2 Durham Road, Ferryhill, County Durham, DL17 8LG	
-	-		Burgess & Hyder Dental Group (Chilton)	Chilton Medical Centre, Norman Terrace, Chilton, County Durham, DL17 0HF	
-	-		Burgess & Hyder Dental Group (Coundon)	The Eden Centre, Victoria Lane, Chilton, County Durham, DL17 0HF	
-	-		Burgess & Hyder Dental Group (Stanhope)	Stanhope Medical Centre, Dales Street, Stanhope, County	
-	-				

				Durham, DL13 2XD
	-	-	Burgess & Hyder Dental Group (Sedgefield)	39 North End, Sedgefield, County Durham, TS21 2AZ
	-	-	Burgess & Hyder Dental Group (Esh Winning)	2 Station View, Esh Winning, Durham, DH7 9HW
	-	-	Burgess & Hyder Dental Group (Billingham)	Old Billingham Community Centre, East Avenue, TS23 1BY
	-	-	Burgess & Hyder Dental Group (Wynyard)	Wynyard Business Park, Unit 1, Chapel Lane South, Wynyard, TS22 5TB

ANNEX B TAVISTOCK ALTERNATIVE

Name of SLC area	Name of Portman Site	Address of Portman Site	Name of Dentex Site	Address of Dentex Site	Site(s) to be divested
Tavistock	Abbey Mead Dental Practice	25 Plymouth Road, Tavistock, PL19 8AU			Abbey Mead Dental Practice

ANNEX C DURHAM / SPENNYMOOR ALTERNATIVE

Name of SLC area	Name of Portman Site	Address of Portman Site	Name of Dentex Site	Address of Dentex Site	Site(s) to be divested
Durham / Spennymoor area	[✂]	[✂]			[✂]
	[✂]	[✂]			
	[✂]	[✂]			