

ACQUISITION BY UNITEDHEALTH GROUP INCORPORATED OF EMIS GROUP PLC

SUMMARY

1. UnitedHealth Group Incorporated (**UH**) has agreed to acquire EMIS Group PLC (**EMIS**) (the **Merger**). UH and EMIS are together referred to as the **Parties**, or for statements relating to the future, the **Merged Entity**.
2. After examining a range of evidence, the Competition and Markets Authority (**CMA**) believes that the Merger, if carried into effect, will result in the creation of a relevant merger situation, and meets the threshold for reference to an in-depth phase 2 investigation, giving rise to a realistic prospect of a substantial lessening of competition (**SLC**).
3. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (the **Act**). The Parties have until 24 March 2023 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

The Parties and their products

4. EMIS is an established UK-based healthcare software business that provides a range of IT solutions to the NHS, including a primary care electronic patient record (**EPR**) system, **EMIS Web**. EMIS Web allows GPs to manage appointment bookings, conduct patient consultations, and update, store and share patient records. EMIS also offers EMIS-X Analytics (**EXA**), software which allows users to conduct data analysis.
5. Every GP practice uses a primary care EPR system as it is an essential piece of software for running a practice. Other software that GPs use may need to integrate with the ERP system. At the moment, over half of GPs in the UK use EMIS Web as their EPR system.
6. The primary care EPR system is also important because it holds all of the patient data for the GP practice. There are strict data protection rules, but this data can often be shared within the NHS (for example when patients are treated at different care settings) and with certain approved suppliers who will use this data to provide analytical tools to the NHS. Because of the important position of the primary care

EPR system, there are various NHS frameworks that govern the procurement and operation of the product, which are monitored and enforced by the NHS.

7. UH is a large US healthcare insurance, healthcare, and health data analytics business. In the UK, UH operates through Optum Health Solutions (UK) Limited (**Optum**) and provides:
 - (a) Medicines optimisation (**MO**) software: MO software suggests alternatives to doctors when they are prescribing medication in order to increase effectiveness and reduce costs. Optum has a significant share of supply of MO software and is currently one of only two suppliers used by the NHS. Both Optum and its main competitor's MO software integrates with the primary care EPR system (such as EMIS Web) so that it can provide GP users with prescribing recommendations as they are prescribing medicines.
 - (b) Population health management (**PHM**) services: PHM encompasses a broad range of products and services that use data analytics to improve physical and mental health outcomes across a population. This is an evolving market in the UK, with many regional NHS healthcare bodies procuring PHM services for the first time. Optum supplies both PHM products and advisory services, which typically require primary care data.

Competitive overlap

8. During the course of its investigation, the CMA received a large number of concerns about the impact of the Merger, including from NHS Digital. Some concerns related to the Merged Entity gaining significant capabilities to innovate and create new products, which would not typically be a competition concern. However, other concerns related to the Merger providing the opportunity for Optum to foreclose its competitors, who rely on data from, or integration with, EMIS Web.
9. Therefore, the CMA's investigation focused on whether the Merged Entity might be able to use its control of EMIS's primary care EPR system to harm Optum's rivals in relation to both MO software and PHM services in the UK.
10. The CMA investigated two theories of harm relating to the two main markets in which Optum is active: MO software and PHM services. Under both theories of harm, the CMA explored whether the Merger could give the Parties the ability to engage in partial foreclosure (ie to limit competitors' access to EMIS's systems but not to entirely prevent competitors accessing those systems), whether they would have the incentive to do so, and what effect this would have on competition. The

CMA focused on partial foreclosure (rather than total) because EMIS Web is subject to various NHS rules and standards that mean the CMA did not consider total foreclosure to be realistic.

Partial foreclosure in MO software

11. The CMA investigated whether the Merged Entity could partially foreclose rival MO software, in particular through worsening integration with EMIS Web or raising the costs for integration.
12. The CMA first considered whether the Merged Entity would have the ability to foreclose MO software competitors by limiting their access to EMIS Web:
 - (a) Evidence from internal documents and third parties shows that integration with primary care EPR systems including EMIS Web is essential to offer MO software as it is embedded in the system.
 - (b) Based on its high share, the low rate of GPs switching to other EPR systems, the essential nature of the product, and feedback from third parties including NHS Digital, EMIS has market power in the supply of primary care EPR systems.
 - (c) Both Optum and its main rival use custom APIs to integrate with EMIS Web, as they require functionality that is not available through the APIs EMIS must offer as mandated by the NHS. This means the provision and commercial terms of the integration is negotiated directly between the MO supplier and EMIS.
 - (d) There are a range of feasible mechanisms available to the Merged Entity that would impact competitors. These include:
 - (i) Worsening integration with EMIS Web: The Merged Entity could reduce the quality of the custom API (through fewer updates, less co-operation and support or reduced functionality), which could have a direct impact on the quality of rivals' MO software and their ability to innovate in the future.
 - (ii) Worsening the user interface in EMIS Web: Optum and its main rival both offer MO software that GPs access while using patient records through an interface with EMIS Web. The Merged Entity could reduce the quality of the user interface (through making it less user-friendly or less embedded in the workflow), which could make the product less attractive for customers.

- (iii) Raising costs: The Merged Entity could increase the commission charged for the operation of the custom API and for any support and development provided to the rival MO supplier, which could mean rivals are unable to price competitively.
- 13. The Parties submitted that the NHS frameworks and active monitoring of the market would limit any ability (and incentive) to engage in foreclosure and provided evidence of various NHS interventions in the past. While NHS standards are likely to provide some protection for suppliers, the CMA considers that the mechanisms described above would be feasible as they relate to custom integration and commercial agreements that fall outside of the NHS mandated standards. In addition, various third parties provided evidence of NHS rules not being sufficient to protect them, including because of timeliness and because the NHS often relies on co-operation from suppliers as opposed to formal enforcement action.
- 14. The CMA also considered whether the Merged Entity would have the incentive to engage in a foreclosure strategy. The CMA considers that any losses to the Merged Entity from limiting the integration of EMIS Web with competing MO software would be low as evidence suggests that EMIS Web customers would be unlikely to switch away from EMIS Web as a result of the strategies above. Gains from MO software customers switching to Optum from its competitors as a result of partial foreclosure could therefore exceed those losses, despite the relatively small size of overall profits available in the MO software market. The size of the MO software market may also grow in the future as a result of new products being developed increasing the Merged Entity's incentive to engage in a foreclosure strategy.
- 15. The CMA considers the effect of the potential partial foreclosure could be significant. Optum only has one main rival in the supply of MO software, and so any foreclosure that materially weakens its only current constraint could lead to an SLC. The strategies described above could also raise barriers to entry and expansion and limit potential entrants' ability to innovate and compete in the future.
- 16. The CMA therefore believes that the Merger gives rise to a realistic prospect of a SLC as a result of partial foreclosure in the supply of MO software in the UK.

Partial foreclosure in PHM services

- 17. The CMA investigated whether the Merged Entity could partially foreclose rival PHM suppliers, in particular through worsening integration with EMIS Web, or raising costs through EXA.

18. PHM covers a broad range of products and services and is a nascent market in the UK. The CMA focussed its assessment on PHM services that are similar to those currently (or planned to be) offered by Optum.
19. In considering whether the Merged Entity would have the ability to foreclose competing providers of PHM, the CMA found:
 - (a) As above, EMIS has market power in the supply of primary care EPR systems.
 - (b) Primary care data from EMIS (given its strong market position) was universally seen as an important input in the provision of PHM services by third parties contacted during the investigation.
 - (c) For some types of PHM services, evidence supported the Parties' submission that bulk extracts of primary care data are all that is required, and this could be obtained through NHS Digital or directly from EMIS through an NHS mandated API. For these types of PHM services, the Merged Entity may have less ability to engage in foreclosure strategies.
 - (d) However, the CMA received consistent evidence from third parties that custom integration is expected to become more important in the future in the supply of other types of PHM services, as suppliers innovate and develop new products for use by GPs or by regional healthcare bodies who oversee primary care provision. The technical requirements and functionality of these products is likely to require custom integration and co-operation between the PHM supplier and EMIS Web. As explained above, custom integration and co-operation is agreed directly between the PHM supplier and EMIS, and the Merged Entity may have the ability to worsen this integration in the future. This would impact on the ability of rival PHM suppliers to innovate and offer competitive products.
 - (e) Some PHM suppliers rely on use of EMIS's data service EXA rather than a direct connection to EMIS Web in order to supply their PHM solutions. A further feasible foreclosure mechanism could be an increase in costs to rival PHM suppliers of the use of EXA, and multiple third parties raised concerns relating to the price and their reliance on EXA.
20. As with the MO software theory of harm, the CMA carefully considered the role of the NHS and the constraint it may provide on the Parties' ability to engage in partial foreclosure, but for the reasons above, considered it would be insufficient to protect all types of PHM services and suppliers.

21. In relation to incentive, the CMA found evidence that a strategy of foreclosing competitors could result in significant gains to the Merged Entity in PHM as it is a growing market and an area of focus for Optum and UH. Losses from any foreclosure strategy could be expected to be small as EMIS Web customers are unlikely to switch to another EPR system in response to worsened integration with competing PHM suppliers.
22. Although Optum currently has a relatively small position in the supply of PHM services in the UK and there is a large number of competitors, the CMA considers there could be a significant effect on the subset of rivals who are targeted by the foreclosure.
23. The CMA therefore believes that the Merger gives rise to a realistic prospect of a SLC as a result of partial foreclosure in the supply of PHM services in the UK.