

To: Kirstin Baker, Inquiry Group Chair, CMA

31.08.23

Dear Ms Baker,

Commercial in confidence

Re: the provisional findings made under Rule 11.3 of the Competition and Markets Authority Rules of Procedure relating to the anticipated acquisition of UnitedHealth Group Incorporated of EMIS Group PLC (the “Provisional Findings”)¹

We are writing in response to the CMA’s provisional findings of the investigation into the UnitedHealth Group Incorporated of EMIS Group PLC. We wish to suggest that further enquiries should be made before the recommendations are finalised.

[REDACTED]

We have two principal concerns:

- We believe that we (and potentially other PHM suppliers) should have been given the opportunity to give our views on the potential impacts of the Merger on our business and on the market in general. The Provisional Findings recognise the breadth and diversity of PHM services (Paragraph 4.5) and states that the CMA invited industry feedback from 18 PHM suppliers, receiving responses from nine (Footnote 660). However, we were not consulted. This appears to be an omission on the CMA’s part, [REDACTED]. No-one has contacted us [REDACTED] to seek our opinion as to whether our market position would be adversely affected. We would like to understand how the CMA identified PHM services providers and we are concerned that the CMA may have failed to consult broadly enough, leading to an underestimate of the potential impact of the Merger on the PHM market. We have significant concerns about the direct and indirect impact on our business, and about the creation of an uneven playing field as a result of the Merger. We would like to know how this gap can be addressed, and how we can give you more detailed feedback before the CMA makes its final decision.
- We were encouraged that the CMA recognised the essential importance of primary care data for PHM (Provisional Findings, Paragraph 10.15) and dismissed the arguments in the UnitedHealth/EMIS Response which in our view contained a number of material inaccuracies and misrepresentations in relation to PHM. Their response greatly understated the importance of primary care data for PHM [REDACTED]

¹ https://assets.publishing.service.gov.uk/media/64d634ea9607100013b27e55/PFs_FOR_PUBLICATION_.pdf

²

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]. It also underplayed the potential impacts on existing primary care data access arrangements and the potential incentives to pursue a foreclosure strategy. We believe both of these to be substantial, especially given the UnitedHealth/EMIS's ability to exploit uniquely generated PHM insights from UK primary care data at scale in the US healthcare market. We were pleased to see that the CMA considered the potential impacts on the PHM market of Optum gaining preferential access to EMIS data, both technically and financially. However, we believe the CMA's analysis has underestimated the risks and impacts of this, and would like to understand to what extent the analysis has been validated or refuted by subject matter experts. We also believe that the potential remedies that have been suggested to minimise any impacts will not be effective. Principally, the CMA suggests that (as regulator) the NHS will intervene, using existing control mechanisms, to ensure data access for PHM services will be maintained (and not be subject to unreasonable price increases). We dispute this, as many of the escalation routes described seem to be more directly related to clinical systems rather than data provision for PHM. We are already aware of significant delays experienced by us and other PHM suppliers gaining access to specific extractions of primary care data, due to EMIS not providing access in a timely manner.

In summary, we have significant, substantive concerns about the provisional findings, and would like to help ensure that the CMA's analysis is based on a full and impartial evaluation of the relevant evidence. We would like the opportunity to be more fully consulted before the final decision, and we would like assurance that if the Merger proceeds, there are appropriate, mandated safeguards in place, to ensure access to primary care data is not compromised for Optum's UK PHM competitors.

[REDACTED]

[REDACTED]